

**INVESTIGATION OF WHITEWATER  
DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

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Investigation of Whitewater Develop... IE

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**SPECIAL COMMITTEE TO INVESTIGATE  
WHITEWATER DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON  
BANKING, HOUSING, AND URBAN AFFAIRS  
UNITED STATES SENATE  
ONE HUNDRED FOURTH CONGRESS**

FIRST SESSION

**VOLUME IX**

ON

**THE INQUIRY INTO WHETHER ADMINISTRATION  
OFFICIALS ENGAGED IN IMPROPER CONDUCT  
WITH RESPECT TO INVESTIGATIONS AND INQUIRIES  
RELATING TO WHITEWATER DEVELOPMENT  
CORPORATION, CAPITAL MANAGEMENT SERVICES,  
MADISON GUARANTY SAVINGS & LOAN,  
AND RELATED MATTERS**

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OCTOBER 20, 23, 24, 25, 26, 27, AND 30, 1995

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Printed for the use of the Committee on Banking, Housing, and Urban Affairs







**INVESTIGATION OF WHITEWATER  
DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

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**DEPOSITIONS**

BEFORE THE

**SPECIAL COMMITTEE TO INVESTIGATE  
WHITEWATER DEVELOPMENT CORPORATION  
AND RELATED MATTERS**

ADMINISTERED BY THE

**COMMITTEE ON**

**BANKING, HOUSING, AND URBAN AFFAIRS**

**UNITED STATES SENATE**

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IN IMPROPER CONDUCT WITH RESPECT TO  
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WHITEWATER DEVELOPMENT CORPORATION, CAPITAL  
MANAGEMENT SERVICES, MADISON GUARANTY  
SAVINGS & LOAN, AND RELATED MATTERS**

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**DEPOSITION OF PATRICK I. NOBLE  
IN RE: S. RES. 120**

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**FRIDAY, OCTOBER 20, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of PATRICK I. NOBLE, called for examination pursuant to notice of deposition, at 9:45 a.m. in Room 538 of the Dirksen Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

FRED W. GIBSON, JR., Esq.  
Office of Inspector General  
Resolution Trust Corporation  
1735 North Lynn Street  
Room 1132  
Rosslyn, Virginia 22209  
On behalf of the Deponent.

**ALSO PRESENT: TIMOTHY P. MITCHELL**

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## PROCEEDINGS

MR. DINH: Good morning. As you know, my name is Viet Dinh. I'm with the Majority staff of the Senate Whitewater committee. The full name is the Senate committee to investigate -- Special Committee to investigate Whitewater Development Corporation and related matters.

This deposition is conducted pursuant to Senate Resolution 120, which established the Special Committee, as I explained to you earlier. Among the areas that the Special Committee is authorized to investigate are Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, the Arkansas Development Finance Authority and other related matters.

Section 1(b)2(b) of resolution 120 authorizes investigation and public hearings into "whether the White House has engaged in improper contacts with any other agency or department in the government with regard to confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development

4

Corporation," and "RTC," for the record, refers to Resolution Trust Corporation.

Section 1(b)2(d) of resolution 120 authorizes investigation and public hearings into "whether RTC employees have been improperly importuned, prevented, restrained or deterred in conducting investigations or making enforcement recommendations relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. These are the subjects that will be the focus of today's deposition.

I shall tell you that these depositions are conducted in advance of public hearings. We anticipate those public hearings to be held sometime in November. We have not determined who will be called as witnesses during those public hearings. If you are, we will call you to be a witness at those hearings, you will be given advanced notice of your attendance.

The stenographer will prepare a record of the questions and answers and the depositions shall be treated as committee confidential until the

1 commencement of public hearings. At that time, some  
2 or part of your deposition transcripts may be made  
3 public.

4 Prior to the hearings, you will receive a  
5 letter from the committee telling you that you may  
6 come to the Senate here to review the transcript of  
7 your deposition and make note of any corrections for  
8 transcription on an errata sheet. That visit is for  
9 the limited purpose of review, and the information on  
10 the transcript shall not be disclosed for other  
11 reasons, to the press and to other witnesses.

12 If you are called to testify at public  
13 hearings, you will be provided with a copy of your  
14 deposition transcripts four days in advance of your  
15 testimony, again, for the limited purpose of  
16 preparing yourself for the testimony at the public  
17 hearings.

18 You may be represented by counsel, and as I  
19 see Mr. Fred Gibson is here.

20 MR. GIBSON: That's right.

21 MR. DINH: Objections to the form of the  
22 question will be noted for the record. There are two

---

1 grounds upon which counsel may object and give an  
2 instruction not to answer, and that is privilege and  
3 scope; that is, if your answer requires you to  
4 disclose any privilege or if the question calls for a  
5 matter beyond the scope of the resolution.

6 Ultimately, I should advise you that any  
7 dispute as to the questions or other matters within  
8 the deposition, the committee chairman will rule on  
9 the objection.

10 You can swear in the witness.  
11 Whereupon,

12 PATRICK I. NOBLE  
13 was called as a witness and, having first been duly  
14 sworn, was examined and testified as follows:

15 EXAMINATION

16 BY MR. DINH:

17 Q Can you state your name for the record.

18 A Yes. Patrick I. Noble.

19  
20  
21  
22

1  
2 Q Can you give me your office phone  
3 number?

4 A Office,  
5 202-242-4226.

6 Q From the time you had notice of your  
7 depositions, have you had any conversation with  
8 anybody other than your personal attorneys and/or  
9 your family members regarding the subject matters  
10 you're going to be asked to testify about?

11 A No, I have not.

12 Q Without telling me what you were asked or  
13 what you said, can you tell me whether you've been  
14 interviewed or questioned under oath by any  
15 investigative agencies on the subject matter of what  
16 you've been asked to testify about?

17 A Since I've been notified?

18 Q No, within the last two years.

19 A Yes, I have.

20 Q Who were you interviewed by?

21 A Office of Independent Counsel.

22 Q Who do you work for?

---

8

1 A The Resolution Trust Corporation.

2 Q What is your position there?

3 A Deputy Assistant Inspector General for  
4 investigation.

5 Q And since when have you been in that  
6 position?

7 A Since July 1990.

8 Q And before 1990, were you with the  
9 Resolution Trust Corporation also?

10 A No, I was not.

11 Q Where were you?

12 A General Accounting Office.

13 Q So you've been with the RTC for four  
14 years -- five years approximately?

15 A Yes.

16 Q How long were you with the GAO before that?

17 A 3-1/2 years.

18 Q Can you give us a brief history of your  
19 professional career before you came to the GAO?

20 A Yes. I worked from 1972 to 1986 as a  
21 special agent with the FBI, and then from the FBI I  
22 went to the General Accounting Office as a special

1 agent investigator and then the RTC.

2 Q Now I want to go even further. Can you  
3 tell us a little bit about your educational  
4 background. This is your chance to brag.

5 A Grad school -- I have a master's in  
6 business administration and a master's in criminal  
7 Justice, BS in accounting.

8 Q Approximately how many people do you  
9 supervise currently in your position at the RTC?

10 A Five.

11 Q And who are your supervisors? Who do you  
12 report to?

13 A I report to Clark Blight.

14 Q And what is his position?

15 A Assistant Inspector General for  
16 investigation.

17 Q And who is the Inspector General?

18 A Jack Adair -- John Adair.

19 Q Is Mr. Adair the direct supervisor of  
20 Mr. Blight?

21 A There is a Deputy Inspector General, Steve  
22 Switzer, who Mr. Blight reports to.

---

10

1 Q So the hierarchy, as I understand it, is  
2 Mr. Adair, Mr. Switzer, Mr. Blight and then you?

3 A Yes.

4 Q What is the nature of your  
5 responsibilities?

6 A I supervise investigations which arise in  
7 the Washington, D.C. area with the RTC. These are  
8 criminal, civil and administrative investigations.

9 Q So you are based here in Washington, D.C.?

10 A Yes.

11 Q Is your area of jurisdiction geographical  
12 or is it substantive throughout the RTC?

13 A It's a little bit of both. It's  
14 geographical, Washington employees or contractors and  
15 allegations that go over -- we have regional offices,  
16 and if an investigation might be involved in several  
17 regions, usually my office would be assigned to it.

18 Q To coordinate or to perform the actual  
19 investigations?

20 A To perform the investigations, sometimes  
21 with help from the regional people.

22 Q Do you have counterparts at your level? Do



1 you have counterparts in regional offices?

2 A Yes, I do.

3 Q And they report to Mr. Blight?

4 A Yes, through another Deputy Assistant  
5 Inspector General.

6 Q Now, we've been talking about the RTC and  
7 the RTC Inspector General's office almost  
8 interchangeably up to this point. Can you explain to  
9 me whether they are interchangeable or if not, what  
10 is the relationship between the two?

11 A They're not interchangeable. The Inspector  
12 General office is an independent office within the  
13 RTC that reports to the head of the agency and to  
14 Congress. It's a separate entity.

15 Q What is the primary function of the  
16 Inspector General's office?

17 A It's to provide Congress, I think, and the  
18 public some assurance that someone is looking at the  
19 operations of the agency at the RTC.

20 Q Is it fair to say that the Inspector  
21 General is an independent investigative authority  
22 with matters relating to the Resolution Trust

---

1 Corporation?

2 A Yes.

3 Q As I take it -- from that, I take it  
4 Mr. Adair does not report to the head of the RTC?

5 A I think he has certain responsibilities to  
6 report to him, but as far as on a day-to-day and what  
7 he does and does not do, no.

8 Q He conducts his office autonomously?

9 A Yes.

10 Q And I take it that includes the  
11 investigations that he's asked to perform?

12 A Yes.

13 Q Who refers matters to Mr. Adair or to you  
14 or anybody else in the Inspector General's office for  
15 investigation?

16 A Just about anybody. Members of the public,  
17 people from RTC, employees, contractors, members of  
18 Congress.

19 Q But the referrals themselves do not have to  
20 be generated from within the RTC?

21 A No.

22 Q On a day-to-day basis, is there a lot of

1 communications and contacts between the two, the  
2 Resolution Trust Corporation and the Inspector  
3 General's office?

4 A I would say yes.

5 Q What is the nature of these contacts? Are  
6 they mostly with respect to the referrals and the  
7 report back of the results of your investigations?

8 A Yes, and the conduct of our investigations.

9 Q You do not keep the RTC apprised of your  
10 current conduct of the investigation?

11 A Generally, no. Maybe from a general  
12 standpoint, yes, but not specific details of our  
13 investigations.

14 Q You do not clear investigative decisions  
15 with the RTC?

16 A Absolutely not.

17 Q The RTC does not ask you to undertake  
18 certain steps in order to perform your job?

19 A No.

20 Q And you do not report on a day-to-day basis  
21 the results of your specific investigative steps  
22 besides the general overall conclusion at the

---

14

1 conclusion of your investigation?

2 A Right, yes.

3 Q What is your relationship with other  
4 investigative bodies within the RTC? And by this, I  
5 mean offices like the Office of Contractor Oversight  
6 and Surveillance or something like investigators in  
7 human resources, which we have seen throughout the  
8 documents.

9 A Well, we maintain contact with them,  
10 liaison with them. They generally refer matters to  
11 us in the regular course of their business. Things  
12 come up that they believe fall within our  
13 responsibility, so they refer matters to us.

14 MR. IVEY: Could you read the question  
15 back.

16 (The reporter read the record as requested.)

17 MR. IVEY: So you're referring to OCOS.

18 MR. DINH: OCOS, Office of Contractor  
19 Oversight and Surveillance and investigators from  
20 human resources within the Resolution Trust  
21 Corporation.

22 MR. IVEY: Can we go off the record for a

1 second.

2 (Discussion off the record.)

3 (Recess.)

4 MR. IVEY: Just to recap some of what took  
5 place off the record, I raised a question about where  
6 Majority counsel was going with the issue of the  
7 OCOS, the Office of Contractor Oversight and  
8 Surveillance. We had a discussion about the  
9 substantive matters that may be covered with respect  
10 to that, although that was brief, and that raised the  
11 concern that has been raised previously in writing by  
12 the Minority with the Majority with respect to a  
13 slippery slope of multiple witnesses that may be  
14 required to be deposed if we begin on this issue.

15 The memorandum our office sent was from  
16 Lance Cole to Bob Giuffra. Mr. Giuffra is chief  
17 counsel of the Banking Committee. That's dated  
18 October 12, 1995 regarding the Kohn deposition, and  
19 it says "based on our review of the document, it is  
20 clear that a thorough investigation of the Kohn  
21 allegation" -- Kohn is K-o-h-n -- "will require  
22 deposing at least the following witnesses." By my

---

16

1 count, it's 14 people that are listed there.

2 And in addition, it points out "if one  
3 reviews the affidavits and notes of the RTC IG  
4 carefully, it's apparent that the conflict between  
5 Kohn on the one hand and Carver and Kaufman on the  
6 other hand is not likely to be resolved by further  
7 investigation beyond what has been done by the IG,"  
8 and it makes a request there to Mr. Chertoff and  
9 Mr. Giuffra -- Mr. Chertoff, being the chief counsel  
10 for the Majority -- to consider whether the  
11 committee's time will be best spent pursuing that  
12 issue given the commitment of resources and time by  
13 the committee.

14 I reiterated that this morning. I  
15 recommended that we go on with the other issues that  
16 I thought that this witness had been called to  
17 address, namely the administrative leave issue with  
18 respect to the RTC office in Kansas City. Mr. Dinh  
19 thought we should try to resolve it immediately by  
20 having Mr. Chertoff and Mr. Ben-Veniste get  
21 together. I understand that they're both busy at  
22 this point. Mr. Ben-Veniste is in a deposition. I

1 believe Mr. Chertoff is in a meeting.

2 So I would renew my request that we  
3 continue on with the other issues that this witness  
4 can address in his deposition testimony and return to  
5 the OCOS issue at the end of the deposition. If  
6 Majority counsel would still like to do that, but I  
7 want to reiterate on the record that I think we're  
8 getting into a slippery slope situation here where we  
9 could end up with 10 to 20 more witnesses.

10 I know there have been discussions at least  
11 about hearings starting in early November. The  
12 Minority would still like the hearings to begin in  
13 early November, and we consider this very much a side  
14 issue which could be addressed in deposition  
15 testimony while the hearings are ongoing, if  
16 necessary.

17 But in any event, we don't feel that the  
18 hearings should slide back simply to address an issue  
19 which we think is ancillary relevance in any event,  
20 and will be difficult to resolve one way or the  
21 other, given our reading of the documents.

22 MR. DINH: Now that Mr. Ivey has made a

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1 speech, I'd like to put our position on the record.  
2 Mr. Ivey's summation of what occurred off the record  
3 is essentially correct. There is a dispute between  
4 the Majority and the Minority with respect to the  
5 OCOS investigation. I would question the statement  
6 that one needs to interview or depose 16 witnesses in  
7 order to get a sense of the dispute and also come to  
8 some sort of -- if not resolution, then understanding  
9 of the issue.

10 As I understand the discussions that have  
11 been ongoing between Majority and Minority counsels,  
12 it is a matter of allocation of resources, as  
13 Mr. Ivey has stated. It is an allocation of  
14 resources for the reasons that Mr. Ivey has stated  
15 whether or not to depose these 16 witnesses if indeed  
16 all 16 need to be deposed at all.

17 My position with respect to this witness,  
18 Mr. Noble, is that he is a member of the  
19 investigative staff of the RTC Inspector General who  
20 has looked into the issue, and indeed, in the memo  
21 from Lance Cole to Bob Giuffra dated October 12,  
22 1995, Mr. Cole stated that among the reasons why this

1 issue should not be investigated further by the  
2 Special Committee is that the issue "is not likely to  
3 be resolved by further investigation beyond what  
4 already has been done by the IG," and I repeat  
5 "beyond what already has been done by the IG."

6 From my standpoint, the purpose of  
7 questioning Mr. Noble on the question of the OCOS  
8 investigation is not in order to open a Pandora's box  
9 that Mr. Ivey is concerned about, but simply to find  
10 out what, if anything, has already been done by the  
11 Inspector General and what, if any, conclusions were  
12 done by the Inspector General so that we can make an  
13 intelligent decision whether or not to commit the  
14 admittedly scarce resources of the Special Committee  
15 to investigating this issue further.

16 So rather than opening up the issue, it is  
17 simply a question of whether or not it is worthwhile  
18 for us to pursue the issue, and the testimony of  
19 Mr. Noble, I think, is critical to the decision on  
20 this issue.

21 I have requested that Mr. Chertoff,  
22 Majority counsel, join us here in the deposition when

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1 and if he is available. And with that understanding,  
2 I will agree to proceed to the other issues that we  
3 plan to discuss this morning and hold the OCOS  
4 questioning in abeyance.

5 MR. IVEY: If I could add a couple things  
6 to that. I apologize for making the speech. It  
7 certainly wasn't my intent. I wanted to make sure  
8 there was a full record of the discussions we had off  
9 the record. I think that we can get a sense of the  
10 dispute by reviewing the documents. That's the  
11 position of the Minority.

12 And I think the committee's done a lot of  
13 work in this series of matters, that it's all been  
14 bipartisan. It's all been in an attempt to conduct a  
15 full and fair and thorough investigation of the  
16 issues that we've decided to address. And I think in  
17 order to do that, we probably would end up having to  
18 depose between 10 to 20 witnesses if we get into it.  
19 Certainly, that's what the IG did, and I assume that  
20 our investigation would be at least as thorough as  
21 the IG's would be.

22 And I would note at the end, it's my



1 understanding that this is an issue that's being  
2 handled by the Office of Independent Counsel.  
3 Certainly. I'm sure they're going to do a thorough  
4 investigation.

5 And again, I'd just reiterate that we've  
6 got a limited amount of resources and time here. I  
7 think that we could focus on other things.

8 MR. DINH: Finally, I do not have an  
9 understanding, certainly not from the documents that  
10 have been provided to us, whether or not the  
11 Independent Counsel is looking into this issue, so I  
12 would simply state that for the record. I may be  
13 mistaken, but at this point, I do not have any  
14 knowledge or understanding, and that is part of the  
15 reasons why I would like to ask Mr. Noble regarding  
16 the issue.

17 And one of the advantages of having an  
18 earlier investigation by the Inspector General is  
19 rather than having to interview all potentially  
20 relevant witnesses, one has on the record statement  
21 from those witnesses, and so one can determine --  
22 make an intelligent decision as to which of those

1 witnesses are critical to the issue so we can gain an  
2 understanding, if not resolution, of the issues.

3 So certainly any investigation by the  
4 committee does not have to repeat every single step  
5 and then go beyond what the path of the Inspector  
6 General has taken, but simply take advantage of the  
7 excellent work that has been done and the path that  
8 has been laid by the Inspector General for us to  
9 follow.

10 One of the reasons I am concerned about,  
11 and I would like to question Mr. Noble about is  
12 simply not what is documentary evidence gathered by  
13 the Inspector General, but as I look at the record,  
14 the documentary record, there is no formal conclusion  
15 or resolution of the issue, and I would -- so in that  
16 sense, it has not been fully investigated and  
17 resolved by the Inspector General.

18 With that, if we can proceed with the  
19 deposition.

20 BY MR. DINH:

21 Q Let me ask you some general questions,  
22 then, regarding Madison Guaranty Savings & Loan

1 Association. Did there come a time when you became  
2 aware of Madison Guaranty Savings & Loan Association?

3 A Yes.

4 Q When was that approximately?

5 A I recall 1994.

6 Q Was this in part through your general  
7 knowledge, through news media or was it through your  
8 work?

9 A News media.

10 Q Were you personally involved in any  
11 investigation as to why and how Madison Guaranty  
12 failed?

13 A No.

14 Q As I understand it -- and please correct me  
15 if I'm wrong -- that is because it's within the  
16 jurisdiction of the Resolution Trust Corporation, and  
17 you are with the Inspector General of the Resolution  
18 Trust Corporation?

19 A Right.

20 Q So you would be investigating issues that  
21 are ancillary to the investigation or simply to the  
22 conduct of the investigation rather than performing

1 an actual investigation itself?

2 A Yes.

3 Q That is, any issues that may be referred to  
4 you or that may come to your attention through any  
5 other independent means?

6 A Right, yes.

7 Q Did there come a time when you became  
8 familiar with the -- actually, strike that.

9 Did there come a time when you became aware  
10 of the name of Jean Lewis?

11 A Yes.

12 Q Can you tell me approximately when that  
13 was?

14 A Again, in early 1994.

15 Q Was this again, through an official  
16 investigation related to your work, or was it through  
17 the news media?

18 A That was during the investigation.

19 Q Can you tell me the context in which you  
20 came across the name Jean Lewis?

21 A Yes. I believe it was the end of March  
22 '94. Congressman Leach, during the hearing, at

1 least on the floor of the House, brought up a  
2 discussion between April Breslaw of the RTC and Jean  
3 Lewis, and he quoted from the discussion. And in  
4 that, he brought up the idea that there may be some  
5 obstruction of RTC employees going to Congress and  
6 going to management, and that's when Jean Lewis first  
7 came to my attention.

8 Q And the allegation of obstruction made by  
9 Representative Leach is a -- he gathered from the  
10 conversation between April Breslaw and Jean Lewis?

11 A Yes.

12 Q And this investigation occurred  
13 approximately when -- I mean, this conversation  
14 between Breslaw and Lewis occurred approximately  
15 when?

16 A I don't know when the conversation took  
17 place.

18 Q Certainly prior to March 1994?

19 A Yes.

20 Q Was it around January 1994?

21 A I believe it was.

22 Q Did there come a time when you became aware

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1 of Richard Iorio?

2 A Yes.

3 Q When was that?

4 A That was in August of 1994.

5 Q Did there come a time when you became aware  
6 of the name Lee Ausen?

7 A Yes.

8 Q When was that?

9 A August 1994.

10 Q Was this also the time that you were  
11 reacquainted with the name of Jean Lewis?

12 A Yes.

13 Q Can you tell me those circumstances through  
14 which you became reacquainted or acquainted with the  
15 three persons?

16 A Yes. Towards the end of August 1994, Jack  
17 Adair, the IG, received a phone call from the legal  
18 division, two lawyers from the legal division asking  
19 whether or not he wanted to search the offices of, I  
20 believe, all three of the employees.

21 Q By "legal division," you mean the legal  
22 division of the RTC?



1 A Yes.

2 Q Do you know who within the legal division  
3 contacted Mr. Adair?

4 A I believe it was Andy Tomback and Erica  
5 Cooper.

6 Q Do you know what their exact titles were at  
7 the time?

8 A No.

9 Q But they were with the legal division of  
10 the RTC?

11 A Yes.

12 Q By "legal division," you mean the general  
13 counsel's office of the RTC?

14 A Yes.

15 Q Why did Mr. Tomback and Ms. Cooper seek  
16 Mr. Adair's approval of the search of the three's  
17 offices?

18 A The way I understand it, is they had been  
19 doing a preliminary inquiry or some type of review,  
20 and had found what they thought was some proof of  
21 some wrongdoing by those three, and they thought it  
22 might be appropriate for the Inspector General's

1 office to search those offices.

2 Q What was Mr. Adair's response to request a  
3 search the three's offices?

4 A He said it was not appropriate for the  
5 Inspector General's office to search those offices,  
6 and I believe he said he didn't believe there was any  
7 basis for that. And if we needed -- that is, the  
8 Inspector General's office needed any documentation  
9 or proof, that we could obtain it later through other  
10 means.

11 Q Let me unpack your answer just for a  
12 moment. First, Mr. Adair's response according to  
13 your testimony was that it was inappropriate for the  
14 Inspector General to conduct a search of the  
15 offices. Why is it inappropriate?

16 A Inappropriate in that sense because there  
17 was no legal basis for it.

18 Q Do you usually conduct searches of people's  
19 offices as part of your investigation?

20 A I would not say usually.

21 Q It is a rare event if you do indeed conduct  
22 a search of an employee's office?

1 A Yes.

2 Q Have you ever conducted a search or  
3 supervised a search of an employee's office?

4 A No, I don't believe I have.

5 Q Have you ever heard of the conduct of a  
6 search unauthorized by the employee and without the  
7 attendance of the employee present while the  
8 investigators were searching the office --

9 A No.

10 Q -- with or without legal basis for any  
11 search?

12 A No.

13 Q Let's go back regarding the more  
14 substantive point that you've raised regarding the  
15 legal basis, and in order to do that, I'd like to  
16 take you back a little bit further.

17 Did there come a time when you found out  
18 whether any administrative actions was taken by the  
19 RTC with respect to these three persons?

20 A Yes.

21 Q What was that administrative action?

22 A These three were placed on administrative

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1 leave for a period of time.

2 Q Do you know what approximate date they were  
3 placed on administrative leave?

4 A Yes. I believe it was August 12, 1994.

5 Q So on August 12, 1994, the three were  
6 placed on administrative leave -- actually, let me  
7 try to go back one step further to a subject I should  
8 have asked you right at the beginning when you became  
9 familiar with their names. Can you tell me who Jean  
10 Lewis is?

11 A She is -- or at least she was an  
12 investigator with the office of investigations in the  
13 Kansas City office of the RTC.

14 Q And Lee Ausen?

15 A He is the same, investigator with the  
16 Kansas City office.

17 Q Is he Ms. Lewis's supervising investigator?

18 A Yes.

19 Q And Mr. Iorio?

20 A He was the supervisor of both Mr. Ausen and  
21 Ms. Lewis.

22 Q He was the head of investigations in the

1 Kansas City office of the RTC?

2 A Yes.

3 Q And at the time, these were their titles at  
4 the time when they were placed on administrative  
5 leave on August 12, 1994?

6 A I believe so, yes.

7 Q Now, by the term "administrative leave," I  
8 take that to mean they simply do not show up at work,  
9 but they were still collecting their pay?

10 A Yes.

11 Q Is that the general import of the term?

12 A Yes.

13 Q Do you know whether they were permitted  
14 access to their office during the time that they were  
15 placed on administrative leave?

16 A It's my understanding that they were not  
17 able to access their offices.

18 Q Do you know by what means this was  
19 accomplished?

20 A I understand that they were escorted from  
21 the building on the day they were placed on  
22 administrative leave and told not to come back until

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1 their leave --

2 Q So on August 12, 1994, when these three  
3 were still at work, RTC personnel escorted them from  
4 the building and told them that they are not to  
5 return to their offices?

6 A That's my understanding.

7 Q Actually, let me refer you to a memo Bates  
8 stamped 6254. It is a memo from Tom Hinds,  
9 assistant general counsel of the RTC, to John Adair,  
10 Inspector General, re: Kansas City referral.

11 MR. IVEY: What's the date on that?

12 MR. DINH: The date is August 30, 1994.

13 BY MR. DINH:

14 Q And if I can refer you to that and you can  
15 study that for a moment.

16 A I'm familiar with this.

17 Q If you can study the last paragraph of the  
18 first page, which is 6254, which refers to the  
19 offices of the three employees -- actually, can you  
20 read the first sentence for us?

21 A Sure. "As we informed you earlier, the  
22 offices of the three employees who were the focus of

1 the factfinding effort were locked during the  
2 review."

3 Q And is this consistent -- the paragraph, is  
4 this consistent with the oral telephonic request from  
5 Mr. Adair to which you earlier testified?

6 A Yes, it is.

7 MR. GIBSON: Can I make a clarifying point  
8 here and ask a question?

9 Patrick, I want to make it clear. Did you  
10 participate in that telephone call that you're  
11 testifying about with Jack Adair?

12 THE WITNESS: No, I did not.

13 MR. GIBSON: Is your knowledge based upon  
14 what you have been told subsequently?

15 THE WITNESS: Yes.

16 MR. GIBSON: So in essence, everything you  
17 have to say is hearsay about that?

18 THE WITNESS: Right.

19 MR. GIBSON: I just wanted to make it clear  
20 for the record that Mr. Noble wasn't participating.  
21 In testifying about it, he's simply telling what he's  
22 been told about that conversation and not testifying

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1 as to what actually happened.

2 MR. DINH: Thank you for the  
3 clarification.

4 BY MR. DINH:

5 Q Can you tell me who told you about the  
6 conversation?

7 A Jack Adair.

8 Q So he was the participant in the  
9 conversation itself?

10 A Yes.

11 Q Do you know approximately when he told you  
12 about the conversation he had?

13 A I believe it was -- at least August 29th,  
14 the day before this memo. It may have been the day  
15 before that.

16 Q Was it at about the approximate time  
17 immediately after he talked with the RTC people?

18 A It was within a day or two. It was not  
19 immediately afterwards.

20 Q Based on what he told you of that  
21 conversation, this memorandum from Tom Hindes to Jack  
22 Adair reflects what your memory of that conversation

1 was?

2 A Yes.

3 Q This memorandum refers to a suggestion that  
4 the RTC IG conduct a search of the offices of the  
5 three employees --

6 A Yes.

7 Q -- as you've testified earlier?

8 A Yes.

9 Q And just to be absolutely clear, no search  
10 of the employees' offices was conducted by the RTC  
11 IG?

12 A No, it was not.

13 Q As a matter of fact, can you tell me  
14 whether an investigation was opened by the RTC IG  
15 with respect to this issue?

16 A Yes, it was.

17 Q And let me refer you now to a memorandum to  
18 the file dated September 2nd from Patrick Noble; that  
19 is you. And I ask you to study the document. This  
20 is Bates stamped 6252. It's a memorandum to the file  
21 dated September 2, 1994, and the memorandum recounts  
22 a September 1, 1994 meeting with Tom Sarisky.

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1 Can you tell us who Tom Sarisky is?

2 A Yes. He's a lawyer with the employee and  
3 labor relations branch of the legal division of RTC.

4 Q What were the circumstances that you were  
5 asked to meet with Mr. Sarisky -- actually, back up.

6 How did you come to meet Mr. Sarisky?

7 A Through our contacts with the legal  
8 division. They had advised us that Mr. Sarisky and  
9 Randi Mendelsohn of the Office of Human Resource  
10 Management had done a preliminary inquiry, and that  
11 they had some documents.

12 Q What do you understand to be the time frame  
13 of the inquiry by Mr. Sarisky and Mr. Mendelsohn?

14 A It was during the week of August 22 through  
15 26.

16 Q It was after the employees had been placed  
17 on administrative leave?

18 A Yes.

19 Q The factfinding efforts by Mr. Sarisky and  
20 Mr. Mendelsohn with respect to the allegations behind  
21 the administrative leave decision was conducted after  
22 the employees were placed on administrative leave?



1 A Yes.

2 Q What was the purpose of your meeting with  
3 Mr. Sarisky?

4 A We had opened our case and investigation on  
5 that before I met with Tom Sarisky, and the purpose  
6 was to gain just a very quick general knowledge of  
7 what they had done and to obtain the documents, which  
8 he had.

9 Q He had the documents with him?

10 A Yes.

11 Q What were the documents he had with him?

12 A It was a variety of documents he had  
13 received out in Kansas City. It includes visitors  
14 logs, telephone records, fax logs, some documents  
15 relating to criminal referrals. There's some more.

16 Q Let me refer you to the third paragraph --  
17 actually, let me refer you to the last paragraph of  
18 that page, 6252. If you can read that sentence for  
19 me, the first sentence.

20 A The last full one? "He added that some of  
21 the allegations may be misunderstandings such as on  
22 one occasion a PLS attorney had requested some

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1 documents from Lewis."

2 Q Did you at this point gain an understanding  
3 as to what the allegations regarding Ms. Lewis,  
4 Mr. Iorio and Mr. Ausen were?

5 A Somewhat, yes. We had received the earlier  
6 memo from Mr. Hindes, and this helped.

7 Q By the "earlier memo," you refer back to  
8 Bates number 6254, which I previously showed you, the  
9 August 30, 1994 memorandum?

10 A Yes.

11 Q Let me show that to you again, now  
12 referring you to 6255, Bates stamp. And at the top  
13 of the page, if you can read the first sentence for  
14 me.

15 MR. IVEY: I'm sorry. Could I get a  
16 regular page number from the document?

17 THE WITNESS: 2.

18 MR. IVEY: I've got a different Bates  
19 stamp.

20 THE WITNESS: "Yesterday you requested a  
21 draft of talking points to help frame the issues and  
22 summarize facts found from Mr. Ryan's decision to

1 extend or terminate the three employees'  
2 administrative leave."

3 BY MR. DINH:

4 Q And can you read me the handwriting that  
5 was at the top of the page pointing to that sentence?

6 A What I requested was "the referral...not  
7 any draft." I believe it says "any draft."

8 Q So do you recognize that handwriting?

9 A No, I really don't.

10 Q From the understanding of the context of  
11 that sentence, however, and the reference to the  
12 first person singular, do you understand that to be  
13 Mr. John Adair?

14 A Probably, yes.

15 Q So he requested a referral, not a draft of  
16 talking points as Mr. Hindes had suggested?

17 A Yes.

18 Q Why was it that this point was important as  
19 you understand it?

20 MR. IVEY: What draft are we talking  
21 about?

22 MR. DINH: The actual referral, not the

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1 draft.

2 THE WITNESS: When the legal department  
3 said they had a basis for some of these allegations,  
4 we asked them to give us something in writing, and  
5 more than just bullets or draft points. We wanted  
6 some detail behind the allegations and the basis for  
7 those allegations.

8 That's what my understanding is, that Jack  
9 was asking Hindes and Tomback.

10 BY MR. DINH:

11 Q And this April 30th, 1994 memorandum, was  
12 it sufficient as a referral for you to -- for those  
13 purposes?

14 A No. We opened the case previous to  
15 receiving this, based on the fact that it was  
16 coming. Actually, I think we opened the case the day  
17 it arrived based on this memorandum and a letter from  
18 Ms. Lewis's attorney, which also talked about  
19 basically the same allegations. However, we  
20 requested further documentation from the legal  
21 division.

22 Q Ms. Lewis's attorney made a request to you

1 in writing for the Inspector General to investigate  
2 these allegations?

3 A Yes.

4 Q Is it the normal course that the attorneys  
5 request an investigation by the Inspector General?

6 A No. It's not unusual. As I said before,  
7 we get referrals and requests for investigations from  
8 everybody.

9 Q Could a reason for the request to come from  
10 Ms. Lewis's attorney, could one of the reasons be  
11 that he trusted the integrity of the investigation  
12 and the conclusions reached by the Inspector General?

13 A I would hope so, yes.

14 Q But you stated that there was -- this  
15 memorandum in and of itself was inadequate for you to  
16 open an investigation?

17 A We had opened an investigation, but we were  
18 not willing to proceed any further without further  
19 documentation from the legal division.

20 Q And your September 1, 1994 meeting with  
21 Mr. Sarisky was to gather some of the evidence  
22 subsequent to the opening of the investigation?

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1 A Yes, it was.

2 Q And by proceeding no further, you mean that  
3 you took no steps with respect to the evidence that  
4 he gave you on September 1, 1994?

5 A We reviewed it, but we did not act based on  
6 it.

7 Q You did not actively pursue the  
8 investigation any further until you got more written  
9 documentation from the RTC itself?

10 A Right, which they had promised.

11 Q Both in the telephone call to Mr. Adair,  
12 which he told you about -- actually, in the telephone  
13 call to Mr. Adair?

14 A Yes.

15 Q Did there come a time when you found out  
16 that indeed documentation has been adequately  
17 provided to the Inspector General sufficient for you  
18 to pursue your investigation?

19 A Yes. We received a memorandum from  
20 Mr. Hinds.

21 Q Do you know approximately what date that  
22 was?



1 A I believe it was September 21st.

2 Q So it was approximately three weeks after  
3 the August 30th memorandum, the draft memorandum that  
4 Mr. Hinds sent to Mr. Adair?

5 A Yes.

6 Q So during this period, the investigation  
7 was held in abeyance, in anticipation of this formal  
8 referral?

9 A Yes. We reviewed the documents that we had  
10 and were making plans to start our investigation.

11 Q Did you know about any efforts by the  
12 Inspector General's office to prompt the RTC to  
13 follow up with the paperwork?

14 A Yes.

15 Q And what were these efforts, and how did  
16 you come about the information?

17 A My supervisor, Clark Blight, advised me  
18 that he was in contact with Andy Tomback on several  
19 occasions, I believe, some E-mails and some telephone  
20 calls asking Mr. Tomback to get that memo to us as  
21 soon as he could. I believe Mr. Tomback said he was  
22 very busy and kept saying it's coming, it's coming,

1 and it finally came.

2 Q This is the memo without which you would  
3 not pursue further investigation and a memo that the  
4 RTC had promised the IG as the referral with which to  
5 start an investigation?

6 A Yes.

7 Q And based on that representation, you had  
8 started the investigation, but the memo never came --  
9 or the memo did not come until September 21, 1994?

10 A Right, yes.

11 Q Just for the record, I'm handing you a memo  
12 dated September 21st, from Thomas Hinds to John  
13 Adair, Bates stamped 0464 through 0473. Can you tell  
14 me if that was the memorandum to which you were  
15 referring?

16 A Yes, it is.

17 Q And that was the formal memorandum that you  
18 had been seeking and would have authorized you to  
19 open a formal investigation into the charges?

20 A Yes. This is the memorandum we were  
21 waiting for.

22 Q At the time, what did you understand the

1 scope of the investigation to encompass? Did it  
2 encompass simply the charges that were leveled  
3 against the three employees, or did it also encompass  
4 the circumstances under which they were placed on  
5 administrative leave?

6 A My view of the investigation was that it  
7 encompassed everything concerning their being placed  
8 on administrative leave, as well as the allegations  
9 that were in this memo.

10 Q The broad scope of that would certainly be  
11 one of the reasons why Ms. Lewis's attorney requested  
12 your involvement in the process?

13 A I would think so.

14 Q So there were allegations not simply going  
15 to the misconduct of the employees, but the improper  
16 way through which they were placed on administrative  
17 leave?

18 A I don't know if there were allegations to  
19 that. I felt that we should look at the entire  
20 situation as part of our investigation.

21 Q Why did you come to this feeling?

22 A Because of the -- to put everything in the

1 proper context. There was a lot of emotional issues  
2 involved with the investigators versus the attorneys,  
3 which seemed to bring about a lot of these  
4 allegations. And the three people being placed on  
5 leave, of course, was a very emotional situation for  
6 everybody involved. So we felt do a thorough  
7 investigation of just -- to do an investigation just  
8 as the allegations would not truly tell the full  
9 story. We wanted the entire --

10 Q You referred to emotional issues regarding  
11 the investigators and the lawyers leading up to the  
12 allegations against the investigators. Can you  
13 explain that to me?

14 A We had become aware that the attorneys in  
15 the PLS section and the investigators in the Kansas  
16 City office were not getting along very well.

17 Q By PLS, does that mean professional  
18 liability section?

19 A Yes, it does.

20 Q And those are comprised of attorneys?

21 A Yes.

22 Q Can you tell us specifically, do you recall

1 any names within the professional liability section  
2 that you can recall that were in conflict the three  
3 investigators?

4 A I believe Julie Yanda was one and maybe  
5 Russ Kaufman.

6 Q The general feeling was that there was a  
7 conflict between the PLS section and the  
8 investigations section of the Kansas City office?

9 A Yes.

10 Q Julie Yanda is based in Kansas City?

11 A Yes.

12 Q And as you testified earlier, all three,  
13 Mr. Iorio, Mr. Ausen and Ms. Lewis, were in the  
14 investigations unit?

15 A Yes.

16 Q As a matter of fact, Mr. Iorio was the head  
17 of the investigations unit?

18 A Yes.

19 Q Was this history of conflict what prompted  
20 you to look further into the underlying manner in  
21 which the three employees were sanctioned?

22 A Yes.

1 Q You mentioned also that the three employees  
2 were emotional. Was that a product of the way in  
3 which they were placed on administrative leave?

4 A I don't know that I would say that. I  
5 think it's just that -- it was a result of the  
6 conflict they had with the PLS attorneys.

7 Q Did you have any understanding as to the  
8 physical condition of Ms. Lewis at the time she was  
9 placed on administrative leave?

10 A Not at the time she was placed on leave.

11 Q Did you come to any subsequent -- did there  
12 come a time subsequent that you found out of any  
13 physical -- of her physical condition at the time she  
14 was placed on administrative leave?

15 A Yes.

16 Q Can you explain that to me?

17 A Sometime later, I believe she may have told  
18 me herself, that she was either in the hospital or at  
19 home on sick leave on the day she was placed on  
20 administrative leave.

21 Q Do you know why she was in the hospital?

22 A No, I don't.

1 Q Now, going back to the allegations  
2 themselves, which we have been alluding to, but I  
3 have not discussed substantively, can you read -- I  
4 refer now back to Bates number 6252, the memorandum  
5 to the file from Patrick Noble dated September 1994.  
6 Can you read the last full paragraph of that  
7 memorandum, please.

8 A "He said a technical support person had  
9 found a fax from Lewis's attorney, Michael Forshey,  
10 to Lewis. This fax discussed an outside business  
11 venture of Lewis (B.I.T.C.H.). Sarisky stated that  
12 they reviewed the fax logs and saw about seven  
13 entries where faxes were sent back and forth between  
14 Lewis and Forshey."

15 Q Was this one of the allegations that you  
16 were being asked to look into with respect to  
17 Ms. Lewis?

18 A Yes.

19 Q But you did not pursue this further, other  
20 than receiving the documentation and reviewing it?

21 A No, we did not.

22 Q Can you tell us if it's a common occurrence

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1 for you to investigate use of fax machines for  
2 personal purposes?

3 A It's not a common occurrence.

4 Q Can you tell me whether it's rare?

5 A Yes, it is rare.

6 Q Within the last five years of your tenure  
7 with the RTC, can you tell me the approximate number  
8 of instances where such allegations were made or  
9 investigated by you, by your office?

10 A I believe we may have looked into one or  
11 two situations, but they were always accompanied by  
12 other allegations.

13 Q They are not -- they have never been  
14 investigated simply for the use of personal fax  
15 machines?

16 A Yes.

17 Q Personal use of fax machines, I'm sorry.  
18 But as I understand it, there were additional  
19 allegations accompanying Ms. Lewis's administrative  
20 decision to be placed on administrative leave?

21 A Yes.

22 Q And some of those allegations, as you had

1 read earlier, Mr. Sarisky had told you that they  
2 resulted from misunderstanding, such as the -- well,  
3 you have read it into the record earlier.

4 A Yes.

5 Q Now, with respect to what Mr. Sarisky  
6 termed as the most serious allegation, can you please  
7 read the second full paragraph of that -- actually,  
8 the third full paragraph of that page, 6252.

9 A Yes. "Sarisky indicated that of all the  
10 allegations the most serious is the alleged leak of  
11 confidential RTC information by the Lewis. He said  
12 that five of Lewis's co-workers told him that Lewis  
13 had said she had given documents to Congressman  
14 Leach."

15 Q Do you know who Congressman Leach is?

16 A Yes, I do.

17 Q Do you know what his position in the House  
18 of Representatives is?

19 A Yes, I do.

20 Q Can you tell us what it is?

21 A He's the Chairman of the House Banking  
22 Committee.

1 Q And the House Banking Committee has  
2 oversight authority over the RTC?

3 A Yes, it does.

4 Q And at the time, do you know of any efforts  
5 by Chairman Leach in order to exercise that oversight  
6 authority?

7 MR. IVEY: Maybe you could narrow the  
8 question down a little bit.

9 BY MR. DINH:

10 Q Did he hold any public hearings on the  
11 issue that you know of?

12 A Yes.

13 MR. GIBSON: Excuse me. If I could  
14 interject for a moment, in September of 1994 and  
15 previously, I don't believe Mr. Leach was the  
16 chairman of the committee. It was before the  
17 election. Mr. Leach was the senior or ranking  
18 minority member of the committee at that point in  
19 time.

20 MR. DINH: Thank you very much.

21 BY MR. DINH:

22 Q He is now the chairman of the House Banking



1 Committee?

2 A Yes.

3 Q Before November 1994, he was the ranking  
4 member of the House Banking Committee?

5 A Yes.

6 Q As a member of the committee, he still had  
7 authority -- he still had the duty to exercise  
8 oversight authority over the RTC?

9 A Yes, he did.

10 Q So the conduct of personnel by the RTC  
11 would be relevant to his area of oversight?

12 A Yes.

13 Q Did Mr. Sarisky explain to you what he  
14 meant by "confidential RTC information"?

15 A No, not in detail.

16 Q He simply asserted that she provided  
17 confidential RTC information?

18 A Yes.

19 Q And the allegations were based on  
20 assertions by five of her co-workers that she had  
21 provided these documents to Mr. Leach?

22 A Yes.

1 Q Did he explain to you in detail what the  
2 information was that Ms. Lewis provided to  
3 Congressman Leach?

4 A No, he didn't, because I didn't really want  
5 him to at that time.

6 Q Because that's only the mere opening of the  
7 investigation, and you were not pursuing other steps  
8 at this time?

9 A Yes, and I knew that at the time when we  
10 talked to Mr. Sarisky, we wanted to go into detail.  
11 I didn't have enough information to properly  
12 interview him at that time.

13 Q Among the documents that he provided to  
14 you, did he provide a list of any sort regarding the  
15 documents that Ms. Lewis allegedly gave to  
16 Congressman Leach?

17 A I do not believe so.

18 Q Did he provide the actual documents  
19 themselves that were allegedly leaked by Ms. Lewis to  
20 Congressman Leach?

21 A I don't believe so -- to be honest with  
22 you, I don't know, is a better answer to that

1 question.

2 MR. DINH: Off the record.

3 (Discussion off the record.)

4 BY MR. DINH:

5 Q What was the context in which you came to  
6 find out that Congressman Leach had information  
7 regarding the RTC, this particular information about  
8 the RTC? By that, I mean was it by a floor  
9 statement, by press releases or by news media  
0 report? How did you come to find out?

1 A News media.

2 Q Do you know of the approximate time of the  
3 news media reports?

4 A Probably from sometime from the early part  
5 of '94 until August.

6 Q And what was the substance of Mr. Leach's  
7 statements that were reported to the news media?

8 A He had had documentation concerning a  
9 discussion with April Breslaw and Jean Lewis, and  
0 some information about the referrals -- criminal  
1 referrals relating to Madison.

2 Q These are criminal referrals relating to

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1 the conduct of the investigation by RTC?

2 A Yes.

3 Q So they would be relevant to his area of  
4 jurisdiction --

5 A Yes.

6 Q -- in addition to the allegations regarding  
7 the criminal referrals of Madison Guaranty, which is  
8 a financial institution itself?

9 A Yes.

10 Q And the oversight of regulations relating  
11 to financial institutions are also within the  
12 jurisdiction of the House Banking Committee?

13 A Yes.

14 Q So is it fair to say that any documents  
15 that Ms. Lewis was alleged to have leaked or to have  
16 provided to Congressman Leach fell within his area of  
17 jurisdiction for oversight?

18 A I believe so, but I don't really know what  
19 documents she supposedly had given him.

20 Q Did there come a time when you found out  
21 the content or substance of those documents?

22 A No.



1 Q And so still, as we sit here today, you  
2 have no basis to evaluate Mr. Sarisky's assertion  
3 that these were confidential RTC documents?

4 A No, I don't.

5 Q Do you know the approximate volume of the  
6 evidence and documents that Mr. Sarisky provided to  
7 you during the September 1, 1994 meeting?

8 A Yes. It's about half a Xerox boxful of  
9 documents.

10 Q It's half a boxful of documents, in a box?

11 A Right.

12 Q The August 30, 1994 memorandum outlined 11  
13 allegations against Lewis; is that correct? Let me  
14 refer you back to page 6255, page 2 of the August 2,  
15 1994 memorandum?

16 A Yes, that's correct.

17 Q And there were 10 allegations against  
18 Richard Iorio?

19 A Yes.

20 Q And there were three allegations against  
21 Mr. Ausen?

22 A Yes.

1 Q But yet these allegations were not  
2 sufficient for you to open and conduct a formal  
3 investigation into the matter?

4 A We had opened an investigation, but it had  
5 not started until we received further documentation.

6 Q And the half a boxful of documents and  
7 evidence that was provided to you during the  
8 September 1, 1994 meeting was not sufficient?

9 A No.

10 Q Let me refer you now to page 6256, page 3  
11 of the August 30, 1994 memorandum from Tom Hinds to  
12 John Adair. At the bottom of the page, can you  
13 please read the last sentence of that page, please.

14 A "In this case we have determined that many  
15 of the allegations are substantiated and that  
16 referral of the entire matter to the OIG is  
17 appropriate at this time."

18 Q Why did you not take Mr. Hinds's word that  
19 we have determined that the allegations are  
20 substantiated as adequate in order to initiate and  
21 vigorously pursue an investigation into these  
22 matters?

1 A Because he had not provided us with any  
2 information other than the allegations.

3 Q So there was no supporting information  
4 behind the allegations themselves?

5 A No, no, there was not.

6 MR. IVEY: Is this a good point for a  
7 break?

8 MR. DINH: Yes.

9 (Recess.)

10 BY MR. DINH:

11 Q You referred earlier to E-mails going back  
12 and forth between the RTC IG and the RTC itself  
13 regarding the documentation and information that is  
14 required to support the August 30, 1994 request for  
15 an investigation. Let me refer you to 6245, 6246,  
16 6249, 6250 and 6251 and ask you to review those.

17 A Okay.

18 Q Have you reviewed the documents?

19 A Yes, I have.

20 Q Are these the documents to which you  
21 referred to indicate the prompting the RTC IG did to  
22 the RTC with respect to the supporting materials

1 behind the allegations?

2 A Yes, sir.

3 Q In particular, can I refer you to 6249,  
4 which is the second page in your packet there, and  
5 can you read the first sentence of the third  
6 paragraph of that E-mail, please.

7 A "I told Hindes that we had been waiting for  
8 the document which was to give us the details behind  
9 the allegations, et cetera, before we started the  
10 investigation."

11 Q And can you read from the header who this  
12 E-mail is from and to whom it is addressed?

13 A It's from Clark Blight addressed to John  
14 Adair, Steven Switzer and Patricia Black.

15 Q And does the statement which you have just  
16 previously read into the record reflect your  
17 recollection as to the efforts with which the RTC IG  
18 was undergoing in order to get the documentation for  
19 the August 30, 1994 allegations?

20 A Yes.

21 Q Let me refer you to page 6245, which is the  
22 next page in your packet there. Can you -- actually,

1 can you read that -- first of all, can you read who  
2 the E-mail is from?

3 A It's from Clark Blight.

4 Q And can you tell us who the E-mail is  
5 addressed to?

6 A John Adair, Steven Switzer and Patricia  
7 Black.

8 Q And the date of the E-mail?

9 A September 19, '94.

10 Q And the time?

11 A 8:38 eastern daylight time.

12 Q For the record, can you read the E-mail  
13 into the record.

14 A "At about 3:30 p.m. Friday, September 16th,  
15 Andy Tomback called me. He said a draft of the  
16 document detailing the allegations concerning the  
17 three Kansas City employees was on his desk to  
18 review. He described himself as incredibly jammed so  
19 that the document would not reach us on September  
20 16th. He promised the document to us by 5:00 p.m. on  
21 Monday, September 19th. Tomback pointed out that  
22 while Tom Hindes would sign the document, the

1 document was a product of many people. (We may have  
2 to find out about this during our inquiry.)"

3 Q Let me interrupt that. The last sentence  
4 was put in parentheses; correct?

5 A Yes.

6 Q So it implies that that was Clark Blight  
7 talking rather than Tomback talking?

8 A Yes.

9 Q Can you please go on.

10 A "Tomback tried to tell me we could start  
11 our investigation by using the three best items in  
12 the previous memo. When I explained that we were  
13 waiting for the details to support the items, he did  
14 say that the document we will be receiving will  
15 detail the allegations with names and specifics,  
16 et cetera, et cetera."

17 Q Did you have conversations with either  
18 Mr. Blight, Mr. Adair, Mr. Switzer or Ms. Black  
19 regarding this conversation reflected in this E-mail?

20 A Yes, with Mr. Blight.

21 Q Can you explain to me, based on those  
22 conversations and your discussions with Mr. Blight,

1 why it is that Mr. Blight suggested that the  
2 Inspector General would have to find out about the  
3 fact that the document was a product of many people?  
4 A I believe what he meant by that is that if  
5 the document would be detailing the allegations, and  
6 therefore, if many people worked on it, then we would  
7 probably have to talk to that many people to find out  
8 what their firsthand knowledge was of those  
9 allegations.

10 Q So it is not -- this is regarding the  
11 conduct of the investigation itself?

12 A Yes.

13 Q The next sentence refers to a request by  
14 Mr. Tomback to the Inspector General to use the three  
15 best items in the August -- the previous memo, which  
16 I take to be the August 30, 1994 memo?

17 A Yes.

18 Q Why did you, in fact, start your  
19 investigation using the three best items in the  
20 August 30, 1994 memo?

21 A We felt to do the investigation properly,  
22 we needed the information which the legal division

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1 had before we started. And we didn't want to take  
2 the best three or anything. We wanted the  
3 documentation that they had. So our belief was they  
4 needed to provide that to us before we started in  
5 earnest on the investigation.

6 Q I take it you have no idea why Mr. Tomback  
7 wanted to start with the three best?

8 A I believe -- no, I don't.

9 Q And I don't want to ask you to speculate.  
10 Was such a request normal in the course of an  
11 investigation like this?

12 A Such a request being --

13 Q Being to start with the three best, and  
14 we'll go from there.

15 A No, I wouldn't say so.

16 Q And in fact, you did not receive the second  
17 referral memorandum on September 19th as promised by  
18 Mr. Tomback?

19 A No.

20 Q And when did you actually receive the  
21 second referral memorandum?

22 A September 21st.

1 Q And what steps, if any, did you do in  
2 response to the September 21st memorandum?

3 A At that point, we read the September 21st  
4 memorandum and then looked at the documents that we  
5 had received and started to plan what we would do in  
6 our investigation.

7 Q Let me refer you now to a document Bates  
8 stamped 4640, a letter dated September 21, 1994 to  
9 Mr. Kenneth Starr, the Office of Independent Counsel,  
10 signed by John Adair. Can you review that document.

11 A Okay.

12 Q Can you describe, in your own words, what  
13 the basic gist of that letter is?

14 A This letter is from our office informing  
15 the Office of the Independent Counsel that we had  
16 received these allegations and had started an  
17 investigation and that we wanted to know whether we  
18 conducted that investigation, whether it would  
19 interfere with their work.

20 Q The letter references some staff  
21 discussions between the OIC and the RTC IG. Were you  
22 involved in those discussions, or were you aware of

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1 those discussions?

2 A I was not involved. I was aware after they  
3 took place.

4 Q Do you know what the substance of those  
5 discussions were?

6 A I believe they were two different topics.  
7 One was that our -- the RTC had received a subpoena  
8 for documents relating to the placing on  
9 administrative leave of the three employees, and that  
10 was the first topic that was discussed. And the  
11 second was the fact that we had initiated an  
12 investigation and wanted to let the Independent  
13 Counsel know that we had done that.

14 MR. GIBSON: Can we go off the record for a  
15 moment?

16 (Discussion off the record.)

17 BY MR. DINH:

18 Q Let me refer you to document Bates stamped  
19 4656. That is a letter dated September 26th from the  
20 Independent Counsel to Mr. Adair. Can you describe  
21 to me the substance of that letter?

22 A Yes. It's a letter from the Independent



1 Counsel advising us that they request that our office  
2 defer our investigation until their work was  
3 finished.

4 Q So did you, in fact, defer your  
5 investigation and heed the request?

6 A Yes, we did.

7 Q And the investigation has not been  
8 reinitiated?

9 A No, it has not.

10 Q Let me refer you to a staff E-mail Bates  
11 stamped TS 258 from Linda Johnson to Diana Ghosheh  
12 dated September 27, 1994. Can you read the first  
13 sentence of that E-mail, please?

14 A "I knew everything would be swept under the  
15 carpet."

16 Q Is that a fair or accurate representation  
17 of your investigation into this matter?

18 A No.

19 Q Is it a fair -- it was not at the time --  
20 is it a fair and accurate representation into this  
21 matter at this time, as you sit here?

22 A No.

1 Q So Ms. Johnson was simply wrong?

2 A Yes.

3 Q The investigation has not been swept under  
4 the carpet?

5 A No.

6 Q And by "investigation," you mean both  
7 investigations into the substantive allegations of  
8 misconduct against the employees and also the manner  
9 in which they were placed under administrative leave?

10 A Yes.

11 Q Did there come a time when you spoke to  
12 Ms. Johnson?

13 A No.

14 Q Let me refer you to document Bates stamped  
15 TS 253 and ask you to study that. It is a memorandum  
16 by TJS to the KC file dated December 14, 1994,  
17 subject: Linda Johnson. And if I can describe the  
18 document for the record, it's a document describing a  
19 conversation that Linda Johnson had with TJS, whom I  
20 take to be Tom Sarisky, about her fears that she will  
21 be retaliated against for having been the person that  
22 discovered the personal fax to Ms. Lewis from her

1 lawyer that started the allegations against Ms. Lewis  
2 and subsequently Mr. Ausen and Mr. Iorio.

3 Can you read the last paragraph for me, of  
4 that memorandum?

5 A "On December 14, 1994, I called Johnson and  
6 gave her Pat Noble's name and told her to call him,  
7 to send me a copy of the OT request form."

8 Q Did you subsequently get a call from  
9 Ms. Johnson?

10 A No, I did not.

11 Q Ms. Johnson did not follow up on her  
12 alleged fears and report them to you?

13 A No.

14 Q As we sit here to date, do you know of  
15 anybody who has suffered any adverse employment  
16 decision or retaliations for bringing allegations  
17 about Ms. Lewis, Mr. Ausen or Mr. Iorio to the  
18 authorities?

19 A No, I don't.

20 MR. DINH: Thank you very much. I have  
21 nothing further. I have nothing further with respect  
22 to the administrative leave issue, keeping in mind

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1 our ongoing matter with respect to OCOS  
2 investigation.

3 MR. IVEY: Could you read back the last  
4 question.

5 (The reporter read the record as requested.)

6 EXAMINATION

7 BY MR. IVEY:

8 Q Have you done any investigations with  
9 respect to adverse impacts or retaliation against  
10 employees who have may have brought these allegations  
11 against Ms. Lewis?

12 A No.

13 Q So your answer is not based on any  
14 investigative work that you've done. None has come  
15 to your attention?

16 A Right.

17 Q I take it that because of Mr. Starr's  
18 request or Mr. Starr's office's request that the IG  
19 do no investigative work on this matter, that you  
20 didn't do any work whatsoever on this?

21 A We did some work.

22 Q What work did you do?



1 A We reviewed the documents that were given  
2 to me by Tom Sarisky, and we did some planning on how  
3 we thought we would conduct the investigation. Of  
4 course, we read the memos that we received from the  
5 legal division. That's about all we did.

6 Q Can you recall what was in the documents  
7 that you reviewed?

8 A Yes. It was a series of documents. One  
9 part was the telephone records of the fax machine.  
10 There was a massive amount of individual pages of  
11 telephone records. There was also a handwritten fax  
12 log. When you send out a fax, you're supposed to  
13 write it down.

14 There were some E-mails concerning some  
15 awards that had been signed off of by the Kansas City  
16 office, and there was some discussion about who had  
17 authority and who didn't have authority to do that.  
18 There were some criminal referrals on an institution,  
19 I believe, called Cimarron Institution. There were  
20 some visitor logs. If I could look at this memo.

21 Q For the record, which memo are you looking  
22 at?

1 A I'm looking at the September 21, 1994 memo  
2 from Tom Hinds to Jack Adair. There was a copy of  
3 April Breslaw's testimony before the House. I  
4 believe that was early part of 1994.

5 Q Are you getting this information from the  
6 document you're reviewing?

7 A No.

8 Q There's nothing wrong with that. I just  
9 wanted to point it out.

10 A It's to jog my memory -- it's page 6 where  
11 the topic is secretly tape-recording conversations  
12 with RTC employees. It's part of the documents that  
13 we had in the transcript of the hearing.

14 Q Did you also have a copy of the transcript  
15 of the tape itself?

16 A No, I don't believe so.

17 Q Do you know where the tape was?

18 A No.

19 Q Do you know if the tape had been given to  
20 Congressman Leach?

21 A No. I know he quoted from it, but I don't  
22 know whether he actually had the tape or not.

1 Q Were you able to do enough investigation  
2 with respect to the documents you were given to reach  
3 any preliminary conclusions about any of the  
4 allegations raised?

5 A No.

6 Q The August 31 memo that you had, and I can  
7 give you a copy, that's a cover letter -- or cover  
8 memo, I take it, to the Hinds memo to Adair dated  
9 August 30, 1994?

10 A No. The August 31 memo is just a memo from  
11 me to file stating that I had called the three  
12 employees to tell them we had begun an investigation.

13 Q Do you recall any evidence -- and I'm on  
14 page 2 now of the August 30 memo from Hinds to  
15 Adair. There's a list on page 2 of allegations  
16 regarding Lewis, and I want to ask you some questions  
17 about those allegations. And for the record, I'm  
18 using the August 30 document that's Bates stamped  
19 9760, and I'm on page 9761 now.

20 Point 1, "is there proper disclosure of RTC  
21 documents and information to the media and other  
22 individuals?" Was there any evidence that you came

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1 across that was related to that allegation?

2 A I don't believe so. I believe when I  
3 talked to Sarisky, he said that four or five people  
4 had told him that Lewis had said that she had  
5 released documents, so I don't believe there's any  
6 documentary evidence to that effect.

7 Q Do you know if Sarisky had learned this  
8 information through interviews?

9 A Yes, he had.

10 Q Let me hand you a 12-page memorandum. This  
11 is the memorandum from Hinds to Adair dated  
12 September 21, 1994 Bates stamp numbers 9764 through  
13 9755, and I ask you to take a look at that. And I  
14 refer you to page 2 of that memorandum.

15 Now, if you look at the second paragraph  
16 there, it says -- I guess it's the second sentence.  
17 "We learned that Lewis made such statements to  
18 fellow investigators, Ken Foust, Randy Knight, Edward  
19 Noyes, Michael Caron and Gary Davidson."

20 Do you see where I am?

21 A Yes.

22 Q And these statements referred to in that

1 sentence are statements to Congressman Leach. And  
2 the previous sentence above that says that she had  
3 either spoken with, disclosed information or released  
4 documents to Congressman Leach. Did you have a  
5 chance to investigate that allegation?

6 A No, I did not.

7 Q Did you have a chance to refute that  
8 allegation?

9 A No.

10 Q Did you come across any evidence that was  
11 contrary to that allegation?

12 A No.

13 Q Do you know when Ms. Lewis went to meet  
14 with Congressman Leach?

15 A No, I don't.

16 Q Do you know if it was after Special Counsel  
17 Robert Fiske had been appointed, as Mr. Sarisky says  
18 in the third paragraph on that page?

19 A I don't know.

20 MR. DINH: I'm sorry, has there been a  
21 foundation laid for the fact that she had even met  
22 Congressman Leach?

1 MR. IVEY: I thought you had raised that in  
2 your question.

3 MR. DINH: Probable allegations.

4 MR. IVEY: You can put that on the record.  
5 I don't have any problems with that.

6 BY MR. IVEY:

7 Q You said that you had heard Congressman  
8 Leach's floor statement, or you had learned something  
9 about it?

10 A I remember seeing it in the news media.

11 Q Were you familiar with the documents that  
12 he released with the floor statement he made?

13 A I remember seeing them at the time.

14 Q Did you know, or do you recall if any  
15 E-mails from Jean Lewis to a variety of people in the  
16 RTC were part of those documents?

17 A I really don't remember.

18 Q Do you recall if letters to and from Jean  
19 Lewis were included in those documents?

20 A I really don't remember.

21 Q But it was your understanding that there  
22 were allegations that she had spoken with Congressman

1 Leach?

2 A Yes.

3 Q Now, in Mr. Hindes's letter in the fourth  
4 paragraph, I think the last sentence says "based on  
5 Lewis's statements to him, Caron" -- and that refers  
6 to one of the investigators that was interviewed --

7 A Is this the September 21st --

8 Q I'm sorry, the September 21st -- "Caron  
9 believes Lewis gave sensitive RTC documents  
10 including, among other items, the Madison criminal  
11 referrals to Leach." Fourth paragraph.

12 A Yes.

13 Q Did you come across any evidence that  
14 refuted that allegation at all?

15 A No.

16 Q Let me ask you, since we're on that point  
17 about confidentiality, as an RTC -- as part of the  
18 IG's office, have you had occasion to investigate  
19 allegations of disclosure of sensitive or  
20 confidential information by RTC employees?

21 A Yes, I have.

22 Q So are you fairly familiar with the

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1 policies and procedures for disclosing confidential  
2 information?

3 A I think so.

4 Q Let me hand you a three-page document. I  
5 think it's a four-numbered Bates stamp. The first  
6 one is 0980. The Bates stamps are cut off on the  
7 subsequent pages. 0980 is all I have on all three of  
8 the pages. But in any event, this is an RTC  
9 document. It says "Policies and Procedures, Office  
10 of Investigations" at the top. I don't have the date  
11 on my copy of this, but it says "contact Anna  
12 Kautzman." It's from James Dudine to all  
13 investigations staff and the subject is  
14 "confidentiality of investigations, information and  
15 records."

16 Have you ever seen this document?

17 A I don't believe so.

18 Q I was wondering if you could take a moment  
19 just to review the first three points on the page and  
20 I wanted to ask you some questions about it.

21 (Witness reviewed document.)

22 A Okay.

1 Q Have you had a chance to take a look?

2 A Uh-huh.

3 Q The scope of the memo applies to all  
4 investigations staff?

5 A Yes.

6 Q And the second sentence there says  
7 "criminal referrals and supporting facts and  
8 records; investigative reports such as PFRs" -- do  
9 you know what PFRs are?

10 A If I think about it long enough.

11 Q We'll leave that one. PFRs, POIs, case  
12 write-ups, et cetera, financial statements and  
13 supporting data, correspondence to and from attorneys  
14 and contractors, and it goes on. And this is  
15 delineating items that are within the scope of the  
16 confidentiality policies that are discussed here in  
17 this memorandum. Is that fair?

18 A Yes.

19 Q Now, under 3, it says "Background.  
20 Information requests originating outside the RTC  
21 frequently are directed toward the office of  
22 investigation. While these requests may appear

1 reasonable, restrictions on information dissemination  
2 are mandated both statutorily and by RTC policy. The  
3 outcome of both civil and criminal litigation can be  
4 jeopardized by improper release of information or  
5 documents, particularly if that information is  
6 privileged (e.g., under work product or  
7 attorney-client privilege)."

8 Do you see that paragraph there?

9 A Yes.

10 Q Does that make sense to you, that there's a  
11 concern about disseminating confidential information  
12 that's related to ongoing investigations?

13 A Yes, it does.

14 Q Do you think that releasing that type of  
15 information could undermine the investigation or  
16 jeopardize the investigation entirely?

17 A Yes.

18 Q And why would that be?

19 A Premature release of information to the  
20 other side before you put together a case, I think it  
21 would certainly undermine the investigation. A lot  
22 of times when you're talking to people during the



1 investigation, they're very sensitive, and they will  
2 tell you something if they believe it is not going to  
3 be disseminated publicly.

4 Q And that could be useful information in  
5 your investigation?

6 A Yes.

7 Q If you could turn to the next page for me,  
8 there's a number 4 there that has "policy" written  
9 next to it. Part of the sentence next to it is  
10 covered by the word "privileged." But underneath  
11 that it says "FOIA request. RTC investigations staff  
12 should not become involved in these requests, but  
13 refer any such inquiries to their consolidated office  
14 FOIA specialist and to the appropriate PLS attorney  
15 or to the Washington office."

16 By the way, a violation of these policies  
17 and procedures, what type of sanction could that lead  
18 to?

19 A Well, certainly administrative, if it's the  
20 policies they're talking about, there may be some  
21 statutory -- it could be civil, I think.

22 Q "Administrative" could include

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1 administrative leave?

2 A Yes.

3 Q It could include termination?

4 A Yes.

5 Q So if someone, for example, disclosed or  
6 handled a FOIA request on his or her own, that could  
7 cross the line that's laid out here under this  
8 provision that I just read?

9 A It could.

10 Q Under that B, it says next basically that  
11 "any inquiries from the media should be referred to  
12 the consolidated office's designated spokesperson or  
13 the office of corporate communications.  
14 Investigation staff should not attempt to respond to  
15 these questions with anything further than no  
16 comment."

17 So I take that to mean that people should  
18 not be speaking to the press beyond saying no comment  
19 and giving the name of the press contact within the  
20 RTC?

21 A That's what it says.

22 Q And if someone did something other than

1 that, for example, discussed cases, disclosed  
2 information relevant to an ongoing investigations,  
3 that could subject that person to the administrative  
4 discipline you discussed earlier?

5 A It could, yes.

6 Q Now, under that is paragraph 5, "authorized  
7 transfers of information." And under that, there's  
8 A, B, C, D, and it goes on to the next page. I  
9 wonder if you could read that to yourself and let me  
10 know when you're done.

11 (Witness reviewed document.)

12 A Okay.

13 Q Do you see anything under that paragraph or  
14 under that section that suggests authorized transfer  
15 of information that discusses transferring  
16 information to members of Congress?

17 A No.

18 Q And this is a memorandum that sets out the  
19 policies and procedures for confidentiality of  
20 investigations, information and records; is that  
21 correct?

22 A Yes.

1 Q And this is addressed to all investigations  
2 staff?

3 A Yes.

4 Q You were asked a couple questions about the  
5 disclosure of information to Mr. Leach, and I think  
6 it was sort of legal questions, and I wanted to come  
7 back to those, just as a bit of a sidebar here.

8 It was pointed out that Mr. Leach was not  
9 chairman of the Banking Committee at the time you met  
10 with Ms. Lewis. Do you recall that?

11 A Right.

12 Q Now, you were asked questions about whether  
13 the RTC was under the jurisdiction or within  
14 Mr. Leach's jurisdiction. Do you recall that  
15 question?

16 A Yes.

17 MR. DINH: Just note for the record,  
18 supervisory authority.

19 MR. IVEY: Okay, supervisory authority.

20 BY MR. IVEY:

21 Q Do you understand how jurisdiction is set  
22 out in the House and the Senate with respect to



1 committees and individual members of Congress?

2 A I believe to some extent, yes.

3 Q Is it your understanding that jurisdiction  
4 of agencies and issues are within the jurisdiction of  
5 a committee as opposed to a member of Congress who  
6 may be assigned to that committee?

7 A Yes, that's my understanding.

8 Q So, for example, if you got a subpoena from  
9 an individual member of Congress for documents, I  
10 assume RTC would not honor that subpoena because  
11 subpoenas are supposed to come from committees. Do  
12 you understand that?

13 A I believe that's correct.

14 Q Do you recall Congressman Leach trying to  
15 get documents from various departments of the United  
16 States about a year or two ago?

17 A Yes, I do.

18 Q And that was before he became chairman of  
19 the Banking Committee?

20 A Yes.

21 Q Do you recall him going to court over that  
22 issue?

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1 A Yes.

2 Q Do you recall the court's decision with  
3 respect to his request?

4 A I believe the court said since he was  
5 basically acting as a private citizen in that regard,  
6 that he was not entitled to the documents.

7 Q So in other words, Congressman Leach, as an  
8 individual member of Congress as opposed to the  
9 chairman of the Banking Committee, had no authority,  
10 per se, over the RTC?

11 A I believe that's the way it was.

12 Q So if he had been given documents  
13 personally as opposed to as a member of the  
14 committee, there's no basis for that on a  
15 jurisdictional oversight?

16 A There doesn't seem to be.

17 MR. GIBSON: Let me go ahead for the  
18 record, ask a clarifying question or two if I could.

19 MR. IVEY: By all means.

20 MR. GIBSON: You're not a member of the  
21 Bar, are you?

22 THE WITNESS: No, I'm not.

1 MR. GIBSON: You didn't attend law school?

2 THE WITNESS: No, I didn't.

3 MR. GIBSON: And you're not expressing a  
4 legal opinion, but a personal opinion with respect to  
5 this matter?

6 THE WITNESS: Absolutely.

7 MR. IVEY: I appreciate the clarification.

8 THE WITNESS: Me, too.

9 BY MR. IVEY:

10 Q We don't want you called as a witness in  
11 the next document dispute with Congress.

12 A That's good.

13 Q Also, I guess I should ask you this:  
14 You've never worked on Capitol Hill either for the  
15 House or the Senate?

16 A I actually was assigned to the House  
17 appropriations surveys and investigations staff for  
18 about three years.

19 Q In that capacity, did you handle any  
20 subpoenas or document requests from other branches of  
21 the government?

22 A Well, we requested documents from executive

1 branch agencies.

2 Q Were you personally involved with that  
3 process? Was that something that you worked on?

4 A Yes.

5 Q So you do have some familiarity with this?

6 A Yes.

7 Q Let's go back to our document, the policies  
8 and procedures memo from the RTC, and I'll direct you  
9 to the last page, which is 0980 something. We don't  
10 have the last Bates stamp number, but under paragraph  
11 6, "statutory authority," and under that there's A  
12 "The RTC ethics code, employee responsibilities and  
13 conduct section 1605.10, states 'an employee may not  
14 disclose confidential business information obtained  
15 in the course of his or her employment or official  
16 duties except as authorized by law.'"

17 Do you see that?

18 A Yes.

19 Q Have you ever investigated a case where  
20 disclosures were made in violation of the RTC ethics  
21 code?

22 A Yes.

1 Q In your view with the -- I'll ask you a  
2 hypothetical. Would a member of the investigative  
3 staff in the RTC taking documents related to an  
4 investigation that's ongoing to a member of Congress  
5 without any approval from supervisors or legal  
6 department or anyone else in the RTC, would that  
7 violate this code of ethics that I just read?

8 MR. DINH: You're speaking hypothetically?

9 MR. IVEY: That's what I said.

10 THE WITNESS: I believe it would.

11 BY MR. IVEY:

12 Q Let's set that document aside and get back  
13 on the main track here, which was the August 30, 1994  
14 letter from Hindes to Adair. Let me go back to  
15 number 2, "the improper use of government resources  
16 for personal gain conducted in outside business."  
17 You mentioned that some of the documents you had seen  
18 were fax logs?

19 A Yes.

20 Q Were they connected to this allegation,  
21 conducting outside business?

22 A Yes. There was -- I think it was the fax

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1 log showing faxes sent to Jean Lewis's attorney, and  
2 I believe there was a document, maybe a three- or  
3 four- or five-page letter from him to her which  
4 talked about this slogan or about the sales item,  
5 this B.I.T.C.H.

6 Q Interesting slogan.

7 A Yes.

8 Q I'm afraid to ask what they're selling  
9 there. There was some tangible evidence that you  
10 came across?

11 A Yes.

12 Q You didn't have a chance to do a complete  
13 investigation that you would normally do, but you  
14 recall some tangible evidence?

15 A Right.

16 Q What about number 3, "refuse to provide  
17 responsive RTC documents and information to RTC PLS  
18 attorneys for production under grand jury subpoena"?  
19 First of all, are you familiar with the issue that  
20 appears to be raised in that allegation?

21 A Yes.

22 Q Could you tell us what that is.

1 A As I understand it, there was a grand jury  
2 subpoena issued and someone went -- an attorney went  
3 to Jean Lewis and asked for a particular document or  
4 set of documents, and she said she didn't have any.  
5 That attorney then went back to the United States  
6 Attorney and said we don't have them, and the  
7 Assistant United States Attorney said yes, you do  
8 have them, and they're on this part of Jean Lewis's  
9 desk, something along those lines.

10 Q Do you recall which U.S. Attorney's office  
11 was involved in this?

12 A No.

13 Q Do you know if it was the Little Rock  
14 office?

15 A No, I don't.

16 Q Now, did you come across any evidence one  
17 way or the other with respect to that allegation?

18 A No.

19 Q No chance to investigate that?

20 A Not at all.

21 Q Number 4 "deliberate misrepresentation of  
22 work product to RTC management and PLS attorneys

1 (Madison and Cimmaron)." Do you recall anything with  
2 respect to that? What's the issue there?

3 A The issue was at one point in November of  
4 1993, Jean Lewis was removed from working on  
5 Madison. And apparently, someone else -- she was --  
6 the allegation was that she was continuing to work on  
7 Madison, but that someone else was signing her name  
8 on documents making it look like she was not working  
9 on Madison, but working on something else, and I  
10 guess that was Cimmaron. I may have that a little  
11 off but it was basically she was not supposed to be  
12 working on Madison, and she was continuing to work on  
13 Madison, and she was hiding that fact.

14 Q Is it your recollection that she wasn't  
15 supposed to be working on Madison because she had  
16 been put on another assignment, or do you know?

17 A I really don't know what led to that.

18 Q Do you know anything about Cimmaron?

19 A No.

20 Q Number 5 connects with what you just said  
21 there, "misrepresentation of work product on Cimmaron  
22 criminal referral, including both authorization of

1 referral and representation as investigator."

2 A Yes. Again, this is one -- this is  
3 basically the same type of issue where another person  
4 prepared the referral, and I think she may have  
5 signed it, making it look like she had prepared that.

6 Q Do you recall who the other person was  
7 alleged to be?

8 A No, I don't.

9 Q Did any of the documents that you were sent  
10 connect with any of the issues we had just gone  
11 through?

12 A Yes. I think the criminal referral was  
13 part of the documents that would be received.

14 Q I recognize it's been a while -- in fact,  
15 how long has it been since you looked at those  
16 documents?

17 A I did look through them this week, but  
18 before that, it was August of last year.

19 Q Did you have a chance to read any of the  
20 interviews of Ken Foust, Randy Knight, Edward Noyes,  
21 Michael Caron or Gary Davidson?

22 A No.

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1 Q That wasn't part of the package you were  
2 sent?

3 A No.

4 Q 6 and 7 on the page there connected with  
5 the meeting with April Breslaw, and you already said,  
6 I believe, that you didn't come across a tape of the  
7 conversation between April Breslaw and Jean Lewis; is  
8 that correct?

9 A Yes, that's correct.

10 Q Do you know if Ms. Lewis had provided a  
11 copy of the tape to RTC?

12 A No, I don't.

13 Q As far as allegation number 7, "refusing to  
14 turn over a copy of the entire tape to RTC management  
15 while permitting selected colleagues to hear the  
16 tape," you didn't have a chance to investigate that?

17 A No.

18 Q Number 9 -- I'm going to skip 8 --  
19 "refusing to discuss Madison investigation matters  
20 with a PLS attorney without a promise of  
21 nondisclosure to PLS management."

22 Do you know who that PLS attorney was?



1 A It may be in this other memo.

2 Q By "other memo," you mean the September 21,  
3 1994 memo from Hindes to Adair?

4 A Yes.

5 Q Feel free to refer to it.

6 A Adams -- I don't remember what his first  
7 name was -- PLS Attorney Adams. I don't remember  
8 what his first name was -- Philip Adams.

9 Q And what was the issue connected with this  
10 request?

11 A He asked Jean Lewis about the Madison case,  
12 and she wouldn't speak to him unless he said that --  
13 unless he promised not to talk to Julie Yanda about  
14 it. That's the allegation.

15 Q Did you learn -- did you come across any  
16 information with respect to why Ms. Lewis wouldn't  
17 want Julie Yanda to know?

18 A No, we didn't do any investigation, so we  
19 didn't.

20 Q Do you know if there was ever a log of what  
21 documents Ms. Lewis provided to Mr. Leach?

22 A No, I don't.

1 Q I see here it says Mark Gavrellian was  
2 attempting to determine exactly which documents were  
3 released by Lewis to Leach, and it's in the September  
4 21, 1994 memo.

5 Do you know if anyone ever was able to  
6 figure out what documents were provided?

7 A No.

8 Q So when you were asked earlier about being  
9 provided a list of documents that were provided by  
10 Ms. Lewis to Congressman Leach, to the best of your  
11 knowledge, there was no record that was made by  
12 Ms. Lewis or anyone as to what those documents were?

13 A I know of no record.

14 Q I guess the only way we could figure it out  
15 would be to ask Congressman Leach and Ms. Lewis?

16 A I think that's an excellent idea through  
17 you all.

18 Q In the course of your abbreviated  
19 investigation, did you come across any reasons that  
20 Ms. Lewis had given or allegedly given for meeting  
21 with Congressman Leach?

22 A I believe in the letter from her attorney



1 to Jack Adair, her meeting with Congressman Leach was  
2 mentioned, and I believe that it was indicated in  
3 this letter that we couldn't discuss it due to the  
4 confidential nature, something along those lines.  
5 That's all there was in that regard.

6 Q Did you come across any evidence of anyone  
7 trying to impede the investigation with respect to  
8 the nine criminal referrals that were sent?

9 A No.

10 Q Was there any pressure that was put on your  
11 office by the White House or other parts of the RTC  
12 with respect to the investigation, the abbreviated  
13 investigation?

14 A No, not at all.

15 Q You were able to determine the scope of  
16 your determination, what it would have been and  
17 playing it out as you thought fit?

18 A Yes.

19 Q Now, you testified it was rare to  
20 investigate the misuse of a fax machine, at least as  
21 a freestanding allegation, but that you had  
22 investigated fax machine matters with respect to a

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1 panoply of other allegations?

2 A Right.

3 Q Have you ever been involved in situations  
4 in which you investigated allegations of RTC  
5 investigators provided information from ongoing  
6 investigations to members of Congress?

7 A No.

8 Q Are you familiar with any?

9 A No.

10 Q So it's fair to say that this entire  
11 investigation would have been somewhat unique?

12 A Yes, as they all are.

13 Q You mentioned earlier that you had learned  
14 or been told that the PLS attorneys and investigators  
15 of the investigations branch had not been getting  
16 along. I wondered if you could flesh that out for  
17 me.

18 Did you have any understanding of why they  
19 weren't getting along, what the source of the tension  
20 was?

21 A Not really, since I was removed in  
22 Washington. I think part of it was that sometime in

1 '94, PLS -- the office of investigation and PLS used  
2 to be two separate offices that reported  
3 differently. And the office of investigations  
4 sometime in '94 was put under the authority of the  
5 PLS -- actually put into the legal division. So they  
6 basically wound up reporting to PLS attorneys, and I  
7 think that change created some tension.

8 And I also think there's general tension --  
9 it's not always bad -- between investigators and  
10 attorneys, people who are trying to dig up  
11 information and attorneys who are trying to make a  
12 decision about what the value of that information is.

13 Q In fact, that frequently occurs?

14 A Yes, but it's a good thing.

15 Q That was certainly my view as a  
16 prosecutor.

17 A Right, certainly.

18 Q Just to elaborate on that, sometimes  
19 investigators develop information that they think  
20 might lead to a prosecutable case, and then bring the  
21 information to attorneys or prosecutors who take a  
22 different view of that information?

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1 A Yes.

2 Q In fact, sometimes they think that the  
3 information, perhaps in a criminal referral, is  
4 insufficient on its face to merit further  
5 investigation?

6 A I think that's true.

7 Q Do you know if any of the tension between  
8 PLS and investigations either increased or developed  
9 completely out of Ms. Lewis disclosing information to  
10 Congressman Leach and telling her colleagues about  
11 that?

12 A I don't really know. I think it's beyond  
13 that, but I don't really know.

14 Q Do you know if some of her colleagues felt  
15 that it was inappropriate or perhaps illegal for her  
16 to disclose information to Congressman Leach?

17 A I read that in the newspaper or something  
18 to that effect in the newspaper.

19 Q Other than the newspaper.

20 A No, I don't know that.

21 Q What happened to Ms. Lewis after your  
22 investigation was deferred to Mr. Starr's

1 investigation?

2 A She continued working, was brought back  
3 from admin leave and continued working.

4 Q She was reinstated?

5 A Yes.

6 Q And is that true for Mr. Iorio and  
7 Mr. Ausen?

8 A Yes.

9 Q How long were they on administrative leave  
10 altogether?

11 A I believe two weeks.

12 Q And they were paid the entire time?

13 A Yes.

14 Q Do you know if they brought any types of  
15 suits against the government -- if you don't know,  
16 that's fine.

17 A No, I don't know.

18 Q Was there a document you produced or  
19 someone working with you produced that would have  
20 laid out your investigative plan for this matter?

21 A I don't believe we did one. We talked  
22 about it. And by the time we got the September 21st

1 memo, we had already had contact with Independent  
2 Counsel, and within a day or two knew we weren't  
3 going to be doing the investigation, so I don't  
4 think -- we normally do those, but we did not do  
5 that.

6 Q I take it if you had not had a chance to  
7 flesh out your plan, interviewing her colleagues may  
8 have been part of your investigation?

9 A Oh, absolutely.

10 Q Particularly her fellow investigators in  
11 Kansas City?

12 A Yes.

13 MR. IVEY: I think that's all for me.

14 MR. DINH: I just want to return to a  
15 couple of issues.

16 EXAMINATION

17 BY MR. DINH:

18 Q With respect to the conflict between the  
19 PLS lawyers and the Kansas City investigators, just  
20 to touch upon that briefly, part of the memorandum  
21 dated August 30, 1994 from Tom Hindes to John Adair  
22 mentions the Madison investigation, specifically

1 allegation number 9 against Jean Lewis on page 2 of  
2 that memorandum, in my Bates stamp 6255, "refusal to  
3 discuss Madison investigation matters with a PLS  
4 attorney without promise of nondisclosure to PLS  
5 management."

6 And you testified earlier that PLS  
7 management you understood to be Julie Yanda --

8 A Yes.

9 Q -- who was one of the PLS persons which you  
10 testified about earlier who was involved in the  
11 conflict between PLS and investigations?

12 A Yes.

13 Q Did this allegation number 9, therefore,  
14 raise a link in your mind with respect to the conduct  
15 of the Madison investigation and the substantive  
16 allegations of misconduct against Ms. Lewis?

17 A Not necessarily.

18 Q It depends on what the motive is,  
19 obviously.

20 A Yes.

21 Q Also, you testified with respect to  
22 allegation number 5 against Ms. Lewis regarding the

1 misrepresentation of work product on Cimmaron  
2 criminal referral. That misrepresentation related to  
3 Ms. Lewis's conduct of the Madison investigation;  
4 that is, after she was removed from the case?

5 A Well, it involves her conduct after she was  
6 removed from the Madison investigation.

7 Q I'm sorry, I misidentified that, and that  
8 was allegation number 4, "deliberate  
9 misrepresentation of work product to RTC management  
10 and PLS attorneys (Madison and Cimmaron)."

11 A Yes.

12 Q Is that more accurate?

13 A Yes.

14 MR. IVEY: For the record, 5 deals with it,  
15 too.

16 MR. DINH: Right. Thank you.

17 BY MR. DINH:

18 Q Do you know why she was removed from the  
19 Madison case?

20 A No, I don't.

21 Q Based on these allegations and your  
22 testimony earlier regarding the conflict between the

1 PLS attorneys and the investigators, could one of the  
2 sources of tension be the ongoing investigation into  
3 Madison Guaranty Savings & Loan Association?

4 A It could have been.

5 Q Was it a probable basis for that tension  
6 given what you know of this case?

7 A I don't think I know enough to say that.

8 Q And I wouldn't ask you to speculate.

9 We've gone through in painstaking detail  
10 over the allegations against Lewis, but let me point  
11 to page 3 of the memorandum, which is Bates stamped  
12 6256, and on that, can you tell me the number of  
13 allegations regarding Iorio?

14 A 10.

15 Q And the number against Ausen?

16 A Three.

17 Q During your meeting with Mr. Sarisky  
18 memorialized on the September 2, 1994 memorandum to  
19 the file, did you spend -- how much time did you  
20 spend discussing the allegations against Ms. Lewis?

21 A That whole meeting probably didn't last any  
22 more than 45 minutes and a lot of the time was spent

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1 discussing what they did in general; probably not a  
2 lot of time on Ms. Lewis.

3 Q Now, we've gone through the details with  
4 respect to the allegations. I would like simply for  
5 you to read again for the record -- well, let me ask  
6 you, was your understanding from that meeting that  
7 much of the allegations were misunderstandings  
8 between PLS and the investigation unit?

9 A Well, what I took from the meeting was  
10 Sarisky thought they may be just misunderstandings,  
11 but again, there might be something else to it.

12 Q And Sarisky is the primary investigator for  
13 the RTC with respect to these administrative leave  
14 charges?

15 A I don't know if you'd call him the primary  
16 investigator. He works in the labor employee branch  
17 of the legal division, so he has familiarity with  
18 personnel.

19 Q He was one of the two investigators on this  
20 case along with Randi Mendelsohn?

21 A Yes, he was.

22 Q He would be one of the people most



1 knowledgeable about the facts of the case?

2 A Yes.

3 Q You testified with respect to the  
4 guidelines for confidential investigation information  
5 and records, that such release of information may  
6 lead to civil sanctions depending on the statutory  
7 provisions or implicated by whatever conduct of an  
8 employee.

9 A Yes.

10 Q I would like to refer you to document Bates  
11 stamped EK 5847, and I believe the EK designates that  
12 they come from the files of Ellen Kulka.

13 Do you know who Ellen Kulka is?

14 A Yes.

15 Q Can you state for the record what her title  
16 is?

17 A She was the former general counsel of the  
18 RTC.

19 Q "Former" meaning during 1994?

20 A During 1994, she was the general counsel of  
21 RTC.

22 Q The document is labeled "Analysis of

1 documents leaked by Jean Lewis." Can you read for me  
2 the first paragraph of that document.

3 A "Initial review focused on whether leaking  
4 the documents constituted a criminal act pursuant to  
5 either the Privacy Act, 5 USC section 552(a) or the  
6 Trade Secrets Act, 18 USC section 1905. It appears  
7 that neither of these acts were implicated by the  
8 documents that were made public by Representative  
9 Leach. Whether Ms. Lewis disclosed other records  
10 which could implicate those acts is unknown at this  
11 time."

12 Q And again, keeping in mind that your prior  
13 testimony is that we do not have a complete inventory  
14 of the documents that were alleged to be disclosed to  
15 Representative Leach and that your analysis into the  
16 area was preliminary, do you have any evidence  
17 contradicting that statement?

18 A No.

19 Q You were assigned to the appropriations  
20 surveys and investigations subcommittee of the House  
21 or the Senate?

22 A The House.



1 Q So you are familiar with the conduct of  
2 investigations and matters that would be relevant to  
3 a committee's functions?

4 A Yes.

5 Q Would matters relating to the operations  
6 and management and the conduct of investigations be  
7 relevant to a member's function as a member of such  
8 an oversight committee?

9 A Yes.

10 Q Let me refer you back again to the document  
11 you've previously referred to. This is a memo from  
12 James Dudine on the confidentiality of  
13 investigations, information and records. Can you  
14 tell me if that document is dated?

15 A I don't see a date on it.

16 Q So we do not know when this policy and  
17 procedure was promulgated and communicated by  
18 Mr. Dudine to the staff?

19 A No.

20 Q And you were asked specifically regarding  
21 subparagraph 6(a) of the memorandum that quotes the  
22 RTC ethics code employee responsibilities and conduct

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1 section 1605.10 stating that -- actually, can you  
2 read the quotation of that provision?

3 A "An employee may not disclose confidential  
4 business information obtained in the course of his or  
5 her employment or official duties except as  
6 authorized by law."

7 Q And you stated earlier -- and that is, just  
8 to clarify the requirement, it does reference  
9 specifically confidential business information?

10 A Yes, it does.

11 Q And you testified earlier that you have no  
12 information or evidence to form a basis whether or  
13 not any document alleged to have been provided by  
14 Ms. Lewis to Mr. Leach was indeed confidential?

15 A Yes.

16 Q So based on your investigation, limited as  
17 it was, did you have any evidence in order to form a  
18 belief -- any evidence indicating that Ms. Lewis had  
19 violated that provision of the ethics code?

20 A No, I had not.

21 Q And from what I understand, has either  
22 Mr. Iorio, Mr. Ausen or Ms. Lewis been formally

1 charged with -- other than the allegations that  
2 brought about their administrative leave, formally  
3 charged with or brought up on any ethical violations  
4 with respect to this conduct?

5 A No.

6 Q As a matter of fact, besides what we were  
7 talking about regarding the administrative leave, do  
8 you know of any other time in which any of these  
9 three individuals were investigated or complained  
10 about with respect to their professional conduct?

11 A No.

12 Q You were asked earlier whether an  
13 individual member of Congress can issue a validly  
14 binding subpoena to a member of the executive  
15 branch. Without getting into the nicety of  
16 separation of powers and collective action theory,  
17 would you consider it appropriate -- indeed, would  
18 you consider it appropriate for a member of Congress  
19 to seek information and to receive information that  
20 would be relevant to his function as a congressman?

21 A Yes.

22 Q And you testified earlier that -- well,

1 never mind.

2 MR. DINH: I have nothing further. Thank  
3 you.

4 EXAMINATION

5 BY MR. IVEY:

6 Q Whether it's relevant or not for a member  
7 of Congress to seek the information, if a member of  
8 Congress seeks the information only as a member of  
9 Congress, that provides no type of privilege or  
10 waiver of the statutory restrictions on disclosing  
11 information or the ethical restrictions on disclosing  
12 information, does it?

13 A No, it doesn't.

14 Q Now, you were asked about whether Ms. Lewis  
15 had been -- or I guess Iorio or Ausen had charged or  
16 disciplined for any ethical misconduct. But that was  
17 part of the investigation that you were conducting,  
18 wasn't it?

19 A Yes, but I think the question was other  
20 than what we were doing.

21 Q Just to be clear -- maybe I misunderstood,  
22 but your investigation was deferred because the

1 Independent Counsel was going to look at it?

2 A Yes.

3 Q And your investigation is still deferred?

4 A Yes.

5 Q With respect to the August 30th, 1994 memo  
6 from Hinds to Adair on page 3, there are the  
7 allegations regarding Iorio and Ausen. Again,  
8 regardless of the number, would you say that some of  
9 these allegations are serious allegations?

10 A Yes, I think they are.

11 Q And the sum --

12 MR. GIBSON: Can I ask a clarifying  
13 question? When you say these are serious  
14 allegations, do you mean that the allegations allege  
15 or conduct demonstrated would have serious  
16 repercussions or do you mean seriously the  
17 allegations have substance?

18 MR. IVEY: The former.

19 BY MR. IVEY:

20 Q Was that the question you answered?

21 A Yes.

22 Q All right. We can let the record stand.

1 And then the last point, with respect to  
2 your memo to the file, you were quoted as saying that  
3 Sarisky said that some of the allegations may be  
4 misunderstandings. It looks to me that he only cited  
5 one or two examples.

6 A Yes.

7 Q And the examples would be, one is the PLS  
8 attorney requesting documents from Lewis and they  
9 ended up being on your desk. And the second is Lewis  
10 asked some questions about Madison Guaranty -- was  
11 asked questions about Madison by a PLS attorney and  
12 she refused to talk to him unless he promised not to  
13 relay the information to Julie Yanda; is that  
14 correct?

15 A Correct, yes.

16 Q Do you recall any other instances or  
17 examples that Mr. Sarisky gave you in which he said  
18 that the allegations were the result of  
19 misunderstandings?

20 A Yes. He mentioned something about the  
21 awards. I don't remember the full details of the  
22 awards. There were some awards that were approved,

1 and there was a question over who had authority to do  
2 that. I think Mr. Iorio had put those awards  
3 forward, and that was one that he had mentioned.

4 Q So of the 11 allegations against Ms. Lewis,  
5 10 against Mr. Iorio and three against Mr. Ausen,  
6 only those three that you just mentioned are, your  
7 understanding, potentially based on a  
8 misunderstanding?

9 A No, not really.

10 Q No, there are others?

11 A When he said that, he was basically talking  
12 in general. He said for instance, the awards or the  
13 discussion with the attorney about Madison. I didn't  
14 attempt to look at all the allegations and categorize  
15 them as misunderstandings -- I didn't mean to put in  
16 that memo just the ones that he thought were  
17 misunderstandings.

18 It was just a -- that memo is supposed to  
19 be a general documentation, that I met with him, got  
20 those records and to give a flavor for what he had  
21 found in his brief investigation. So I didn't  
22 mean -- the fact that they're there or not there

1 doesn't mean --

2 Q I follow you there. Let me see if I can  
3 nail this down a little bit. Was it your sense that  
4 he was referring to the meeting and disclosure of  
5 information to Congressman Leach with respect to the  
6 misunderstandings?

7 A No. I think what he meant by  
8 misunderstandings are the allegations that concerned  
9 Lewis's discussion with attorneys and work products  
10 and the awards. And that her attorney showed up --  
11 supposedly showed up inside RTC office space and  
12 that's the type of thing.

13 Q Would the improper use of the government  
14 resources, the business issue be in that category,  
15 too?

16 A Well, yes and no. In general, he meant it,  
17 yes. This all could be a misunderstanding. On the  
18 other hand, we had fax logs that showed that she was  
19 faxing things. So all he meant was -- we didn't have  
20 a chance -- "we" meaning he and Randi Mendelsohn --  
21 didn't have a chance to thoroughly investigate this,  
22 and they would turn it over to us. And there were

1 some serious things and there may be things that go  
2 to misunderstanding --

3 Q But that had to be sorted out in the course  
4 of the investigation?

5 A Right, right.

6 Q So it would be hard for you to say -- it  
7 wouldn't make sense for me to go through the list  
8 because you can't say for sure --

9 A I know the awards was one thing. He  
10 thought there was clearly a misunderstanding, but  
11 other than that, no.

12 MR. IVEY: I have no further questions.

13 EXAMINATION

14 BY MR. DINH:

15 Q I have one quick follow-up question. You  
16 discussed earlier regarding subparagraph 4(b) of the  
17 Dudine confidentiality of investigations and  
18 information and records memorandum, and that dealt  
19 with media requests. Can you please read that  
20 subparagraph for the record.

21 A "Any inquiries from the media (television,  
22 radio newspapers, et cetera) should be referred to

1 the consolidated offices's designated spokesperson or  
2 the office of corporate communications.  
3 Investigations staff should not attempt to respond to  
4 these questions with anything further than 'no  
5 comment.'"

6 Q Let me refer you to a document Bates  
7 stamped JY 0204. I believe the JY designates it came  
8 from the files of Julie Yanda. It's an electronic  
9 mail message from L. Jean Lewis dated September 30,  
10 1993, 13:58:47 CDT was the time to Richard Iorio and  
11 Lee Ausen, and then subsequently it was forwarded to  
12 Dennis Cavanaw and by Mr. Cavanaw to Glion Curtis.

13 Mr. Iorio placed on his forwarding message  
14 that "FYI, public affairs/Kansas City has been  
15 advised." Can you please read this message from  
16 Ms. Jean Lewis.

17 A "Just to let you know, I've received a call  
18 from Sue Schmidt with The Washington Post. She  
19 stated that there were certain people within the  
20 legal and investigative community of RTC that were  
21 afraid certain stories were being deep-sixed that  
22 needed to be broken and she had been given my name as



1 someone to whom she needed to speak about such  
2 potential stories. She further stated that she had  
3 tried to contact me at home but had not been able to  
4 reach me. My number is unlisted. She then asked me  
5 if I was the Laura Jean Lewis in Shawnee Mission,  
6 Kansas whose number was unlisted. I advised  
7 Ms. Schmidt regardless of whatever story she was  
8 looking for, I had no comment, advised her to contact  
9 Jane Jankowski, gave her the number and thanked her  
10 for her understanding and appreciating my position  
11 and discontinued the call."

12 Q Based on your knowledge of what you  
13 testified to earlier, based on your communication of  
14 confidential communication of the RTC and your  
15 analysis of the memorandum by Mr. Dudine, are the  
16 actions taken by Ms. Lewis memorialized in that  
17 E-mail consistent with that directive?

18 A Yes, they seem to be.

19 MR. DINH: I have nothing further on this  
20 issue. If we can go off the record, I will -- can we  
21 take a quick break.

22 (Recess.)

1 MR. DINH: Referring back to the  
2 conversations we had at the beginning of the  
3 deposition regarding the RTC IG's investigation into  
4 what we have tentatively called the OCOS issue,  
5 Mr. Ivey, to recap, has eloquently restated his  
6 objection for the record.

7 However, "section 1(b)2(b) of Senate  
8 Resolution 120 authorizes an investigation into  
9 whether the White House has engaged in improper  
10 contacts with any other agency or department in the  
11 government with regard to confidential RTC  
12 information relating to Madison Guaranty Savings &  
13 Loan Association or Whitewater Development  
14 Corporation."

15 Based on the documents that have been  
16 produced through the Special Committee, there is  
17 reason to believe that there is an issue outstanding  
18 with respect to whether the White House has engaged  
19 in such an improper contact with the RTC at or around  
20 January 14, 1994.

21 Mr. Ivey and the Minority staff has stated  
22 for the record that the RTC IG has conducted a



1 thorough investigation into this matter, and  
2 therefore, it is a questionable allocation of the  
3 Special Committee's resources to devote further  
4 attention to this matter. The Special Committee, of  
5 course, is always mindful of the scarce resources  
6 available to it in order to conduct an investigation  
7 that has been charged by Senate Resolution 120.

8         However, it is the Majority's position that  
9 Mr. Noble's testimony, rather than opening up the  
10 slippery slope of this issue, may help us make a more  
11 intelligent decision as to whether this matter should  
12 be investigated further by the Special Committee. So  
13 in that light, I will proceed with the questioning  
14 into the OCOS issue and note for the record Mr. Ivey  
15 and the Minority side's objections.

16         MR. IVEY: If I could add one more thing to  
17 that, reading the Senate resolution is fine. I just  
18 wanted to reiterate that there was no scope  
19 objection. There was no argument by the Minority  
20 that this questioning is outside the scope of the  
21 resolution. The resolution covers almost everything  
22 anyway. So that's certainly not the concern that I

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1 raised.

2         The concern I raised was that if we go into  
3 this issue, it's tough to do it halfway and that just  
4 means doing a lot of depositions, the ones  
5 highlighted in the October 12th memo that I  
6 referenced earlier, and I think we're going to be  
7 doing all of those. It's hard to see how one witness  
8 could resolve an issue in which there's conflicting  
9 testimony by several parties.

10         And I would also reiterate the request when  
11 we do the extra depositions, because I assume that  
12 we'll have to, just in fairness to the witnesses and  
13 the partners involved, that we do those depositions  
14 in a way that does not delay the start of the  
15 hearings for the first week of November. In other  
16 words, since this is essentially an ancillary issue,  
17 I think we can do the depositions perhaps as the  
18 hearings are ongoing. I assume this will all be  
19 worked out at a higher level.

20         MR. DINH: My point in reading the  
21 resolution was not to focus on the scope of the  
22 resolution, although I appreciate Mr. Ivey's

1 admission that the resolution covers almost  
2 everything, but simply to highlight the fact that  
3 this issue, as I hope Mr. Noble's testimony will bear  
4 out, goes right to the core of what is authorized by  
5 the resolution for the Special Committee to  
6 investigate.

7 And therefore, this issue is of paramount  
8 importance to the Special Committee's duties under  
9 Senate Resolution 120, however this issue is  
10 resolved, and there is a good possibility that the  
11 issue will be resolved or the decision will be made  
12 after Mr. Noble's testimony that our resources shall  
13 be allocated in such a way that does not require the  
14 attendance and deposition of 20 witnesses or however  
15 many was listed in the October 12th memo from Lance  
16 Cole to Bob Giuffra

17 BY MR. DINH:

18 Q Moving on, can I ask you, Mr. Noble, if  
19 there came a time when you became aware of a  
20 Mr. Russell Kaufman?

21 A Yes.

22 Q Can you describe to me or state for the

1 record what his position is and whether he's with the  
2 RTC?

3 A Russ Kaufman is an attorney with the PLS  
4 section of the RTC in Kansas City.

5 Q The PLS is the professional liability  
6 section?

7 A Yes.

8 Q The same section as Julie Yanda is in?

9 A Yes.

10 Q And he's based in Kansas City itself?

11 A Yes.

12 Q Did there come a time when you became aware  
13 of a Mr. Michael D. Kohn?

14 A Yes.

15 Q Can you state for the record what his  
16 position is?

17 A In 1994 he was an investigator with the  
18 office of investigations in the Kansas City office of  
19 the RTC.

20 Q And you have testified earlier that you  
21 have a working relationship with other investigators  
22 within the RTC such as OCOS whereby they would refer

1 matters to you and communicate and coordinate  
2 investigations with your office?

3 A Yes.

4 Q Did there come a time when a matter was  
5 brought to your attention with respect to Mr. Kohn  
6 and Mr. Kaufman for investigation?

7 A Yes.

8 Q Can you explain, for the record, the  
9 circumstances of that referral?

10 A Yes. I believe it was in August 1994, we  
11 received information from the OCOS office in  
12 Washington, that in January of 1994, there had been a  
13 meeting in Kansas City involving Mr. Kohn and  
14 Mr. Kaufman and another attorney in which the other  
15 attorney allegedly said that the White House or the  
16 White House counsel had requested all of the RTC  
17 documents on Whitewater and Madison.

18 Q And this was referred to your office for  
19 investigation?

20 A Yes, it was referred to our office for  
21 whatever we deemed appropriate.

22 Q What prompted such a referral? Why is it

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1 relevant that the White House counsel's office had  
2 requested information from the RTC?

3 A Well, if the White House counsel had  
4 requested information, that may have indicated some  
5 obstruction by the White House with the operations of  
6 the RTC.

7 Q And by "obstruction," you mean specifically  
8 in relation to the investigation of Madison Guaranty?

9 A Yes.

10 Q And why is that -- why would that be  
11 obstruction?

12 A Obstruction or interference it may be since  
13 it had been named in the papers that the President  
14 had been involved, at least he had been named in the  
15 criminal referrals, that if he had requested  
16 information involving an investigation of Madison,  
17 that it may have been that there would be some  
18 interference. That would have been representative --

19 MR. GIBSON: Let me ask a clarifying  
20 question. Are you using the term "obstruction" in  
21 any technical sense?

22 THE WITNESS: No.

1 MR. DINH: Thank you for the clarification.

2 BY MR. DINH:

3 Q And this, of course, references back to  
4 your earlier testimony regarding keeping information  
5 with respect to pending investigations confidential,  
6 especially with respect to targets, subjects or  
7 witnesses related to those investigations?

8 A Yes.

9 Q Because it compromises the integrity of the  
10 investigation?

11 A Yes.

12 Q And so by using "obstruction" or  
13 "interference" in a nontechnical sense, that's what  
14 you referred to?

15 A Yes.

16 Q That somehow your investigation would not  
17 proceed as you wished, but would be somehow be  
18 impeded or hindered by such advanced knowledge?

19 A Yes.

20 Q Let me refer you to a document Bates  
21 stamped 5716. It is an electronic mail message from  
22 Michael D. Kohn to Bob Jacobs, cc: John Gorski,

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1 Leonard Newmark, dated August 8, 1994, time stamp  
2 15:33:58. As it looks, Bob Jacobs forwarded the  
3 E-mail to William A. Kmetz, K-m-e-t-z, with the  
4 notation "info from Casey on Rose investigation. I  
5 think you should all handle!!!!"

6 Mr. Kmetz then forwarded the E-mail to  
7 Patrick I. Noble on Wednesday August 10, 1994, date  
8 stamped, 16:12:53 EDT with the notation "Pat, I'm  
9 forwarding this E-mail for whatever action you deem  
10 appropriate." I would ask that you study the  
11 document.

12 (Witness reviewed document.)

13 A Okay.

14 Q Was that electronic mail message -- first  
15 of all, can you describe to me briefly what the  
16 substance of that electronic mail message is?

17 A Yes. Basically, the same kind of  
18 conversation we just talked about, that Bill Kmetz  
19 was sending this information to me, that there had  
20 been a conversation on January 14, '94 in Kansas City  
21 with Russ Kaufman and Michael Kohn and another  
22 attorney in which a request from the White House was

1 mentioned for all the RTC records related to  
2 Whitewater and Madison.

3 Q Was this the first time you came to be  
4 aware of this particular matter?

5 A Yes.

6 Q It was referred to your attention for  
7 whatever actions you deemed appropriate. What  
8 actions did you deem appropriate?

9 A We opened an investigation immediately, and  
10 began to look into the matter.

11 Q By "we," can you tell me who exactly within  
12 your office was involved in the investigation and  
13 what responsibility each person had with respect to  
14 this investigation?

15 A I was the overall supervisor of the  
16 investigation, and the case was assigned to Dana  
17 Bedwell, who was in charge of the day-to-day nuts and  
18 bolts of the operation -- of the case.

19 Q By being the supervising investigator, were  
20 you kept aware of the progress of the investigation?

21 A Yes.

22 Q On a daily basis?

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1 A Yes.

2 Q So you would have intimate knowledge as to  
3 how the investigation was conducted and what  
4 witnesses were interviewed and what conclusions were  
5 ultimately reached by the investigators?

6 A Yes.

7 Q You mentioned that the investigators in  
8 your office interviewed the offices relevant to this  
9 investigation. Did you interview or a member of your  
10 staff interview Michael Kohn?

11 A Yes. Actually, just for clarification, my  
12 office was in charge of the investigation. Dana  
13 Bedwell is the one who's running it. We got help  
14 from our Kansas City office and anybody who was in  
15 Kansas City was interviewed by Kansas City agents.

16 Q That was that working relationship you  
17 described earlier between the offices of -- the  
18 different regional offices?

19 A Within the office of Inspector General.

20 Q Did somebody -- or did you become aware  
21 that Michael Kohn was interviewed by a member of the  
22 office of Inspector General?



1 A Yes.

2 Q And did he affirm the information that he  
3 provided in that E-mail which served as a referral  
4 with which you opened an investigation?

5 A Yes, he did.

6 Q Did he provide the investigator or your  
7 office with any documentary evidence of his  
8 recollections?

9 A Yes, he did.

10 Q What did he provide?

11 A Three or four pages of handwritten notes.

12 Q Let me refer you to Bates stamp 5708  
13 through 5711, although 5709 seems to be a blank page,  
14 and let me refer you to -- let me ask you first  
15 whether those are the notes that you have previously  
16 testified to.

17 A Yes.

18 Q Let me refer you to page 2 of those notes.  
19 It is labeled at the top "1/14/94 page 2 Rose Law  
20 Firm -- continued," and if you can study those  
21 notations.

22 (Witness reviewed document.)

1 A Okay.

2 Q Are those consistent with the E-mail that  
3 you received in reference to this matter and to the  
4 testimony of Mr. Kohn to your investigator regarding  
5 the meeting?

6 A Yes.

7 Q Do you know where, how and when these notes  
8 were made by Mr. Kohn?

9 A Mr. Kohn told us he made these during the  
10 meeting in January of '94.

11 Q So they were not only contemporaneous, but  
12 I guess, simultaneous notes of the meeting itself?

13 A That's what he said.

14 Q Do the notes and the E-mail and your  
15 interview describe -- actually, let's just go through  
16 the incident itself in detail from what you  
17 understand from Mr. Kohn's testimony, notes and  
18 E-mail.

19 He had a meeting on January 14th with  
20 Russell Kaufman?

21 A Yes.

22 Q Was this in Russell Kaufman's office?



- 1 A Yes.
- 2 Q Who else was there?
- 3 A An attorney named Carver.
- 4 Q Subsequently identified as Carver. Do you
- 5 know what the notes refer to Mr. Carver as?
- 6 A I believe they described him.
- 7 Q Actually, not from the notes themselves,
- 8 but even from the testimony or any other documents,
- 9 do you know what the description of Mr. -- the other
- 10 lawyer was at the time?
- 11 A Yes, it was an E-mail. I don't remember
- 12 offhand, but --
- 13 Q Let me refer you back to the E-mail.
- 14 A The individual whose name I did not write
- 15 down was a white male, balding with glasses.
- 16 Q And he's subsequently been identified as
- 17 Mr. Carver?
- 18 A Yes.
- 19 Q Does that description of Mr. Carver fit the
- 20 description of Mr. Carver as your agents found him?
- 21 A Yes.
- 22 Q Why was Mr. Carver's presence relevant to

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- 1 this investigation for you?
- 2 A Because Mr. Kohn said that Mr. Carver was
- 3 the one who said that the White House or the White
- 4 House counsel had requested all RTC records on
- 5 Whitewater or Madison.
- 6 Q Did he then -- did Mr. Kohn interject in
- 7 the conversation at all between Mr. Carver and
- 8 Mr. Kaufman?
- 9 A That's when Mr. Kohn said yes, he objected
- 10 to RTC giving documents to the White House.
- 11 Q He objected to RTC giving documents to the
- 12 White House?
- 13 A Right.
- 14 Q Presumably for the same reason that you had
- 15 testified as to whether it was improper for the White
- 16 House to have communicated this request?
- 17 A Yes, and he had been trying to get some
- 18 records from them for a couple of weeks and had some
- 19 difficulties, so I think that's why --
- 20 Q He had been trying to get records from
- 21 them, "he" being Kohn?
- 22 A Kohn.

1 Q Had been trying to get records from the PLS  
2 section of the RTC Kansas City?

3 A Yes.

4 Q And for several weeks, did you say?

5 A 10 days.

6 Q Do you know the particulars of that  
7 dispute?

8 A To some extent, yes. The OCOS in  
9 Washington was doing a review of the Rose Law Firm,  
10 basically a document review, and they wanted the  
11 legal services agreement and the certifications that  
12 the Rose Law Firm had provided to RTC.

13 And those records were maintained -- they  
14 thought they were maintained in Kansas City, and  
15 Mr. Kohn, helping the people in Washington, had gone  
16 to Kaufman, I believe, around January 4th or so and  
17 requested those documents. And Kaufman said before  
18 he gave them, he wanted to make sure that it was  
19 okay.

20 Q And Mr. Kohn expressed some -- and were  
21 those documents finally provided to Mr. Kohn?

22 A Yes.

1 Q It was at this January 14, 1994 meeting?

2 A Yes.

3 Q And Mr. Kohn expressed some displeasure  
4 with respect to the "hoops" he had to jump through to  
5 get the documents?

6 A Yes.

7 Q As opposed to the alleged request which was  
8 met by RTC from the White House?

9 A Right.

10 Q And that led him to raise an objection both  
11 on a legal basis and also on an emotional/personal  
12 basis?

13 A Yes.

14 Q What was the response to Mr. Kohn's  
15 objection?

16 A Well, I think the way it was left, there  
17 was -- according to Mr. Kohn, there was some  
18 discussions between Mr. Kaufman and Mr. Carver, what  
19 do they want? Do they want everything? And who is  
20 this? And Carver didn't have the person's name and  
21 he said certainly before I'm going to give any  
22 records up or anything, I'm going to check who the

1 requester is and determine that's appropriate and  
2 everything else. So that was sort of the bottom  
3 line.

4 Q Based on Mr. Kohn's objection and  
5 questions, questions were raised as to the identity  
6 of the requester?

7 A And I think Kaufman also asked who it was.

8 Q And based on those concerns, Mr. Carver  
9 stated that he would check on the identity and level  
10 of the person making a request from the White House?

11 A Yes.

12 Q And these are the notes that he kept during  
13 this entire period of the meeting?

14 A Yes.

15 Q When Mr. Kohn talked to your office, did  
16 there come a time when he signed a sworn affidavit as  
17 to his testimony?

18 A Yes.

19 Q I would ask you to review Bates stamp  
20 number 5703 through 5707.

21 A Yes.

22 Q Is that document the affidavit that

1 Mr. Kohn attested to and executed with your agents?

2 A Yes.

3 Q Is that affidavit consistent with the  
4 testimony of Mr. Kohn to your agents and consistent  
5 with his notes and the E-mail to you with respect to  
6 the subject?

7 A Yes.

8 Q Did Mr. Kohn mention whether he talked to  
9 anybody right after the meeting regarding the  
10 contact?

11 A Yes, he did.

12 Q Did he mention that he talked to Leonard  
13 Newmark?

14 A Yes.

15 Q Did your agents subsequently interview  
16 Mr. Newmark?

17 A Yes.

18 Q Let me refer you, then, to exhibit Bates  
19 stamps 572, and we have the same problem that  
20 Mr. Ivey ran into earlier. The Bates stamps have  
21 been cut off by a process of photocopying, but 572  
22 question mark, I believe, is the appropriate

1 designation. They are interview notes by Dana  
2 Bedwell of what appears to be an interview of Leonard  
3 Newmark on Resolution Trust Corporation stationery.

4 I will ask the witness to review those  
5 notes.

6 MR. IVEY: What's the date?

7 THE WITNESS: August 17th.

8 MR. GIBSON: 1994.

9 THE WITNESS: That's the date it was  
10 prepared. The interview of Newmark was August 16th.

11 MR. IVEY: Thank you.

12 BY MR. DINH:

13 Q And those are the notes that your  
14 investigator took of the interview with Mr. Newmark?

15 A Yes.

16 Q Do you have any reason to question its  
17 validity or accuracy?

18 A Not at all.

19 Q Ms. Bedwell is a competent investigator?

20 A Yes.

21 Q Can you tell us the results of that  
22 interview, whether Leonard Newmark recalled any

1 conversations he had with Mr. Kohn on or around  
2 January 14, 1994?

3 A Yes. Leonard Newmark remembered that  
4 Mr. Kohn had called him and told him basically that  
5 that conversation had taken place in Kansas City.

6 Q When did he call him?

7 A I believe it was the same day.

8 Q And then -- actually, let's back up for a  
9 minute. Who is Leonard Newmark?

10 A Leonard Newmark is an investigator for the  
11 Office of Contractor Oversight and Surveillance in  
12 Washington, and the way I understand his job at that  
13 time was sort of as a desk officer helping, among  
14 other things, the Kansas City office. They needed  
15 help in Washington.

16 Q So he was their liaison to the Kansas City  
17 office?

18 A Basically, yes.

19 Q Was he involved in the initial production  
20 by OCOS to RTC Kansas City with respect to the Rose  
21 Law Firm records?

22 A Yes. He had traveled out to Kansas City in

1 the first week of January, and I think he accompanied  
2 Mr. Kohn to Kaufman's office when they were asking  
3 for those records. And that's when Kaufman wouldn't  
4 give them to him at that point.

5 Q It's natural that Mr. Kohn, regarding what  
6 you've testified regarding his frustration with the  
7 disparity and treatment would have called Mr. Newmark  
8 to complain and/or to advise him of the contact?

9 A Yes.

10 Q And Mr. Newmark recalled that Mr. Kohn told  
11 him substantively about the White House conversation?

12 A Yes.

13 Q What actions, if any, did Mr. Newmark  
14 suggest to Mr. Kohn or did he take himself with  
15 respect to the conversation in the OCOS office?

16 A Mr. Newmark told Mr. Kohn he should  
17 document the conversation.

18 Q Did Mr. Newmark himself take any further  
19 steps beyond the advice of documentation he gave to  
20 Mr. Kohn?

21 A I believe he told Bob Jacobs. Newmark told  
22 us that he told Bob Jacobs.

1 Q And who is Bob Jacobs?

2 A Bob Jacobs was his supervisor at the time,  
3 also an OCOS employee in Washington.

4 Q So Mr. Jacobs was Mr. Newmark's supervisor?

5 A I believe so.

6 Q What is the normal process for  
7 communicating such an improper contact or  
8 conversation -- or such a conversation regarding  
9 improper contact? Would it go up the chain of  
10 command as Mr. Newmark did?

11 A I would think so.

12 Q And the supervisor would determine what  
13 actions, if anything, would be deemed appropriate?

14 A I would think.

15 Q And that was the course that was followed  
16 in August 1994 when the product which was the E-mail  
17 was referred to you and the ultimate outcome of which  
18 was an open investigation into the matter?

19 A Right. Yes.

20 Q Did you receive any such communication from  
21 Mr. Jacobs in January 1994?

22 A No.



1 Q The matter was not referred to you in  
2 January 1994?

3 A No.

4 Q Did your investigators subsequently  
5 interview Mr. Jacobs?

6 A Yes.

7 Q Let me refer you to Bates number 572  
8 question mark, interview notes dated August 17, 1994  
9 of Mr. Robert Jacobs taken by Dana Bedwell. Are  
10 those the notes of the interview?

11 A Yes.

12 Q And they are, to the best of your  
13 knowledge, an accurate reflection of what transpired  
14 in the interview?

15 A Yes.

16 Q Can you recount what Mr. Jacobs's testimony  
17 to Ms. Bedwell?

18 A Jacobs said that he in January -- he does  
19 not recall Newmark ever providing information  
20 concerning a White House request.

21 Q Had Newmark provided such information to  
22 Mr. Jacobs, it would have been the appropriate course

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1 for Mr. Jacobs to follow through on that information?

2 A Yes.

3 Q And possibly to refer the matter to your  
4 office for investigation?

5 A Yes.

6 Q This contact was serious enough of a nature  
7 that it would be considered appropriate enough as a  
8 referral to your investigation?

9 A Yes.

10 Q Actually, incidentally, do you know -- with  
11 respect to the Madison Guaranty investigation and the  
12 whole entire Whitewater investigation, do you know  
13 what the relevance of January 12, 1994 was to the  
14 overall scope, not just simply within the RTC, but  
15 overall in the general picture?

16 A No.

17 Q Would you accept my representation that on  
18 January 12th, two days before the meeting, the White  
19 House had requested the appointment of Special  
20 Counsel Fiske by Ms. Reno?

21 A Yes.

22 Q Would such information make the contact



1 particularly relevant to your investigation to  
2 whether or not it was improper or what motives lay  
3 behind such contacts?

4 A Yes.

5 Q Now, actually, to refer back to  
6 Mr. Newmark's interview, I believe Ms. Bedwell  
7 questioned Mr. Newmark regarding Mr. Kohn's politics?

8 A That came out, yes.

9 Q Do you recall what, if anything,  
10 Mr. Newmark told Ms. Bedwell?

11 A Yes. He said that Kohn was anti-Clinton.

12 Q And of course, that is a political view?

13 A Yes.

14 Q You and I both hold political views?

15 A Yes.

16 Q We are government employees, but at the  
17 same time we are humans and opinionated ones at that?

18 A Yes.

19 Q Did Mr. Newmark further state to  
20 Ms. Bedwell anything regarding the dichotomy between  
21 Mr. Kohn's political views and his professional  
22 conduct?

1 A Yes. I believe he said that Kohn, whatever  
2 his personal feelings, he would still be professional  
3 and would not allow his personal beliefs to interfere  
4 with his professional judgment.

5 Q Do you know Mr. Kohn personally?

6 A No.

7 Q Do you know of his professional conduct?

8 Do you have any basis to evaluate his professional  
9 conduct?

10 A No.

11 Q Other than this investigation, you've had  
12 no other contact with Mr. Kohn?

13 A We had one other investigation in which he  
14 furnished information. We did an investigation, but  
15 we did not --

16 Q You did not work on a day-to-day basis with  
17 Mr. Kohn?

18 A No.

19 Q Mr. Newmark stated to Agent Bedwell,  
20 however, that Mr. Kohn is objective in his work and  
21 would not let his personal feelings interfere with  
22 his professional conduct?

1 A Yes.

2 Q Did you interview Mr. Russell Kaufman  
3 regarding the conversation?

4 A Yes.

5 Q And I refer you to document Bates stamped  
6 5700 to 5701, which is an affidavit by Russell  
7 Kaufman dated August 17, 1994, and if I can refer you  
8 to the third paragraph of that sworn statement by  
9 Mr. Kaufman, can you read the first sentence of that  
10 paragraph.

11 A "I do not recall a discussion with Kohn  
12 concerning the legality of furnishing RTC information  
13 to the White House."

14 Q So Mr. Kaufman does not recall the  
15 conversation that Mr. Kohn alleged took place between  
16 Mr. Carver and Mr. Kaufman?

17 A Right.

18 Q And did you subsequently interview  
19 Mr. Kevin Carver?

20 A Yes.

21 Q Was that also the substance of Mr. Carver's  
22 testimony to you during the interview?

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1 A Yes, it was.

2 Q Let me refer you to exhibit Bates stamps  
3 569 through 5691, and on 5691 is the sworn statement  
4 of Kevin Carver relating to the matter. You've  
5 studied the affidavit. Is that sworn affidavit  
6 consistent with the testimony he provided to your  
7 agents regarding his contacts?

8 A Yes.

9 Q With both of these -- with both Kevin  
10 Carver and Russell Kaufman, did they offer an  
11 alternative explanation as to how the conversation  
12 could have taken place?

13 A Yes. I think they both said that basically  
14 the request could have come from Washington, meaning  
15 RTC Washington, and that everything else that  
16 followed would be just that. Well, how much do they  
17 want, and all of those comments back and forth would  
18 have been about RTC Washington.

19 Q Specifically, he referred to a request made  
20 by the resolution section of the RTC?

21 A Yes.

22 Q Resolution is one of the other sections of

1 the RTC in addition to investigations and PLS and all  
2 that stuff?

3 A Yes.

4 Q And he testified to you, and he said to  
5 your agents and wrote in the affidavit that he had a  
6 request from resolutions at this time, at or about  
7 January 1994?

8 A Yes, he did.

9 Q And the request was for all files relating  
10 to Rose -- the investigation of the Rose Law Firm and  
11 Whitewater Development Corporation and Madison  
12 Guaranty Savings & Loan Corporation?

13 A Yes.

14 Q Did he explain to you what he understood  
15 was the purpose of such a request?

16 A I don't -- I believe the reason was  
17 basically to locate all of the records.

18 Q And sent them to Washington?

19 A And sent them, yes.

20 Q If I refer you back to the Kaufman  
21 affidavit, did Mr. Kaufman state to you, or did he  
22 write in his affidavit that he had previously devised

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1 a procedure to deal with Whitewater -- requests for  
2 Madison Savings & Loan?

3 A Yes.

4 Q What was that procedure?

5 A He was trying to centralize the records and  
6 centralize the requests, have all requests for  
7 records go through him.

8 Q Within RTC itself, there had already been a  
9 mechanism in place to centralize these records?

10 A Right.

11 Q Of course, because of the relevance of this  
12 RTC's investigation with other investigations?

13 A Yes.

14 Q Did Mr. Carver provide any documentary  
15 evidence to you regarding his testimony?

16 A I don't know.

17 Q Let me refer you to Bates stamp 5697  
18 through 5699, what I understand to be the telephone  
19 log of Kevin S. Carver at station 8441 from 1/01/94  
20 through 1/31/94 and ask you to study that.

21 That is a record of all outgoing telephone  
22 calls for the month of January 1994?

- 1 A Long-distance calls.  
2 Q Mr. Carver is based in Kansas City?  
3 A Yes.  
4 Q So any calls he makes to Washington, D.C.  
5 would be a long distance call?  
6 A Yes.  
7 Q Does that call record reflect any calls to  
8 the White House -- to any number within the White  
9 House?  
10 A No.  
11 Q The record reflects only those calls that  
12 are outgoing and not incoming?  
13 A Yes.  
14 Q Does that call record reflect any calls to  
15 the resolution section of RTC in Washington?  
16 A Yes.  
17 Q Specifically, who within the RTC resolution  
18 section does the record reflect Mr. Carver called?  
19 A Greg Smith.  
20 Q When were the calls to Mr. Greg Smith?  
21 A One was January 3, '94, and one is January  
22 14th, and I don't recall if there were other calls to

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- 1 resolutions or not.  
2 Q Those are the ones specifically identified  
3 on the record in a handwritten notation?  
4 A Yes.  
5 Q Did you subsequently -- let me refer you to  
6 Bates Exhibit 57 24, an E-mail from Dana Bedwell to  
7 Lou Sherman, cc: Patrick Noble, dated Thursday,  
8 August 8, 1994, 13:31:52 EDT, and let me ask you to  
9 read the first sentence of that E-mail.  
10 A "Just called Greg Smith/resolution. His  
11 voice mail reported he'll be on vacation from August  
12 11th through the 26th. I will interview him upon his  
13 return."  
14 Q Did Ms. Bedwell subsequently interview  
15 Mr. Smith?  
16 A Yes, she did.  
17 Q Is there a record of that interview that  
18 has been produced to us?  
19 A I believe so.  
20 (Pause.)  
21 Q What, if anything, did Mr. Smith tell your  
22 office regarding the contact?

1 A He said that -- he talked to Mr. Carver on  
2 a frequent basis and that he does not recall  
3 Mr. Carver bringing up the White House requests at  
4 all.

5 Q Did Mr. Smith state that he made a request  
6 to Mr. Carver with respect to documents relating to  
7 Whitewater, Madison or the Rose Law Firm?

8 A I don't believe he did.

9 MR. IVEY: Could you repeat the question.  
10 (The reporter read the record as requested.)

11 MR. IVEY: Thank you.

12 BY MR. DINH:

13 Q Did you interview anybody else in the  
14 resolution section of the RTC with respect to this  
15 investigation?

16 A I don't think so.

17 Q So you were not able to determine whether  
18 or not there indeed was a request from the resolution  
19 section of the RTC to Mr. Carver?

20 A No, I don't think we pursued that.

21 Q Did you make a formal finding -- did you  
22 formally close this matter in any way with respect to

1 the result of your investigation?

2 A No.

3 Q And why was that?

4 A Because of the previous matter concerning  
5 contacts with the White House involving Mr. Altman  
6 and Ms. Hanson, which was handled by the Office of  
7 the Independent Counsel, we took the view that this  
8 may be something they would be interested in pursuing  
9 and we did -- the work that we did we felt was  
10 enough, that it gave us enough information to go to  
11 them with something other than just a raw  
12 allegation.

13 So when we had done what we had done to  
14 finish the interviews, we called and met with the  
15 Office of Independent Counsel, provided them with  
16 what we had done and asked them if they wanted us to  
17 do any more on it, and they said they'd get back to  
18 us.

19 Q And had they gotten back to you?

20 A They did in August or September of this  
21 year.

22 Q Did they ask you to defer investigation



1 into the matter pending their response?

2 A Yes. When we first met with them, yes.

3 Q That was approximately one year that you  
4 got an answer?

5 A Yes.

6 Q The investigation was held in abeyance for  
7 approximately one year?

8 A Yes.

9 Q What, if anything, was the instruction from  
10 the Office of Independent Counsel with respect to  
11 your conduct of this investigation?

12 A They said they would not ask us to do any  
13 further work on this matter.

14 Q So to stop your investigation on --

15 A That's what they said. They would not ask  
16 us --

17 Q Was this made in a formal letter to you?

18 A Yes, which we just got in September.

19 Q So at the time that you had --  
20 approximately what time frame -- the interviews  
21 occurred on August 16, 17. Approximately at what  
22 date did you refer the matter to the OIC?

1 A August 31st.

2 Q August 31st was the meeting with the OIC?

3 A Yes.

4 Q Are there any letters or memoranda  
5 documenting the meeting?

6 A Yes. I have, I believe, a letter -- cover  
7 letter which I enclosed all the interviews that we  
8 had done to date is --

9 Q On August 31st, you sent that note -- the  
10 interview reports --

11 A The interview reports.

12 Q To which we have been referring?

13 A Yes.

14 Q And at that time, you had made a  
15 determination there was sufficient factual basis such  
16 as to refer the matter to the OIC?

17 A Yes.

18 Q Let me refer you to Bates exhibit 0681.  
19 It's an E-mail from Mr. Steven A. Switzer to John  
20 Adair, cc: Patricia Black, dated Wednesday, August  
21 17, 1994, 16:06:14 EDT is the time date and -- I  
22 apologize. Clark Blight was also cc'd on the



1 E-mail. August 17, 1994. This was with respect to  
2 your investigation. Can you tell us what approximate  
3 time frame this was?

4 A It was right in the middle of our  
5 investigation.

6 Q While Ms. Bedwell was conducting interviews  
7 and writing up the reports that we have been talking  
8 about?

9 A Yes. By this time, we interviewed a number  
10 of people.

11 Q Can you read to me the first -- the  
12 paragraph labeled "number 1" on that E-mail?

13 A "The Kohn E-mail seems to be working out to  
14 be another Elvis sighting. At least one of the  
15 participants to the conversations recalls no.  
16 Additional interviews have been conducted, but I  
17 haven't seen them."

18 Q By "additional interviews," he means other  
19 people to the conversation or who would have  
20 secondary knowledge of this conversation?

21 A Yes.

22 Q Given the date and time and the information

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1 imparted by the E-mail, would you characterize this  
2 not as a conclusion but merely as an update?

3 A Yes.

4 Q Would you characterize the Kohn E-mail as  
5 an Elvis sighting?

6 A Would I characterize it -- yes.

7 Q Do you normally refer Elvis sightings to  
8 the Office of Independent Counsel?

9 A No.

10 Q So there is more factual basis, a report of  
11 the White House contact in January 14, 1994, that  
12 supports that allegation such that you felt compelled  
13 to refer the matter to the Office of Independent  
14 Counsel?

15 A Due to the sensitivity of the subject  
16 matter, I felt that the Independent Counsel needed to  
17 be aware of it.

18 Q So you're telling me if -- off the record.  
19 (Discussion off the record.)

20 BY MR. DINH:

21 Q But as I understand it, the office -- your  
22 office, the RTC IG did not make a formal conclusion

1 to this matter at all?

2 A No, he didn't.

3 Q And Mr. Kohn has not recanted his  
4 testimony, nor withdrew his affidavit?

5 A No.

6 Q Neither has Mr. Newmark?

7 A No.

8 Q Neither has Mr. Carver nor Mr. Kaufman?

9 A Right. No.

10 Q So you have a battle of sworn affidavits?

11 A Yes.

12 Q Let me ask you also the persons whom you  
13 also interviewed with respect to this matter. Did  
14 you interview Mr. Kmetz?

15 A Yes.

16 Q Did you interview Mr. Zigan?

17 A Yes.

18 Q Did you interview Mr. Womble?

19 A Yes.

20 Q These are the people that were involved in  
21 the initial negotiations with the RTC Kansas City  
22 with regard to a production of the Rose Law Firm

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1 documents?

2 A Yes.

3 Q These were all people affiliated with OCOS?

4 A Yes.

5 Q Mr. Kaufman reported to you, according to  
6 his affidavit, that he talked to Mr. Kmetz in June  
7 1994 regarding the White House request he had  
8 overheard in Kaufman's office?

9 A Mr. Kohn did.

10 Q Mr. Kohn reported to you that he had told  
11 Mr. Kmetz about it?

12 A Yes.

13 Q Who is Mr. Kmetz?

14 A Mr. Kmetz is a deputy director, I think his  
15 title is, of OCOS.

16 Q So he would be a supervisor of Mr. Kohn?

17 A Yes.

18 Q And also Mr. Newmark?

19 A Yes.

20 Q And again, repeating the testimony you gave  
21 earlier with respect to Mr. Jacobs, but applying to  
22 Mr. Kmetz, had he received this information, it would

1 have been appropriate for him to forward it up the  
2 chain of command?

3 A Yes.

4 Q And indeed, it would have been  
5 inappropriate for him not to have taken action on it?

6 A Yes.

7 Q Did Mr. Kmetz tell you -- what, if  
8 anything, did Mr. Kmetz tell you during your  
9 interview regarding his conversation with Mr. Kohn?

10 A He said he doesn't recall Mr. Kohn bringing  
11 up requests by the White House in June or any other  
12 time.

13 Q The first time he heard about it was  
14 through your investigation?

15 A Right.

16 Q He did not recall any conversations with  
17 Mr. Kohn respecting this issue in June?

18 A No.

19 Q Had he had such a conversation, it would  
20 have been appropriate for him to follow up and refer  
21 the matter to you or to higher-ups?

22 A Yes, I believe he said so himself.

1 Q And neither Mr. Womble nor Mr. Zigan  
2 likewise had any recollection with respect to this --  
3 any knowledge of this conversation in Mr. Kaufman's  
4 office prior to August 1994?

5 A I believe Mr. Zigan -- I thought he  
6 remembered that Kohn told him at the time. Womble  
7 did not remember any request, as I recall it.

8 Q In that respect, can I refer you to a  
9 record of interview, again filed by Dana Bedwell,  
10 dated August 17, 1994, and can I ask you to read --

11 MR. IVEY: What's your Bates stamp?

12 MR. DINH: The Bates stamp is 5722.

13 BY MR. DINH:

14 Q Read the third full paragraph of  
15 Mr. Zigan's interview.

16 A "Zigan recalled that sometime during  
17 January 1994 that Kohn, Leonard Newmark (OCOS) and  
18 Ron Carroll (OCOS) came back from a meeting with RTC  
19 lawyers whom they had just visited to get some  
20 documents regarding the Rose Law Firm. Zigan said he  
21 overheard a conversation between them about an RTC  
22 attorney who was very nervous about their request.

1 He also recalled a conversation in this regard about  
2 the White House asking for the same documents.  
3 However, Zigan was not sure if this topic came up  
4 during this conversation or at a subsequent time.  
5 Zigan did not recall any further discussion of the  
6 White House matter until just recently."

7 Q Can you state who Mr. Zigan is?

8 A Zigan is an investigator for OCOS, who in  
9 January of '94 was assigned to the Kansas City  
10 office.

11 Q So he would be at the same level with  
12 Mr. Kohn?

13 A Yes.

14 Q He is not his supervisor?

15 A No.

16 Q He is his colleague?

17 A Right.

18 Q Not to imply that supervisors are not  
19 colleagues, but he's at the same reporting level as  
20 Mr. Kohn?

21 A Yes.

22 Q And he does recall a conversation in

1 January 1994 with respect to a request by the White  
2 House for records -- for RTC records in Mr. Kaufman's  
3 office?

4 A Yes.

5 Q And Mr. Newmark -- you had testified  
6 earlier that Mr. Newmark advised Mr. Kohn to document  
7 the matter and refer it to his supervisor in order to  
8 follow up on the meeting?

9 A I know he said document.

10 Q He said document it and Mr. Newmark himself  
11 reported the conversation to his supervisor,  
12 Mr. Jacobs?

13 A Right.

14 Q Mr. Zigan -- Mr. Newmark, with respect to  
15 Mr. Kohn, is he his supervisor or is he a more senior  
16 person?

17 A He's like a liaison, so he's probably --

18 Q Different offices?

19 A He's in Washington.

20 Q But Mr. Zigan did not report to you that he  
21 would pursue the matter in any fashion after his  
22 conversation with Mr. Kohn?

1 A No.

2 Q And of course, being an investigator at the  
3 same level with Mr. Kohn without firsthand knowledge,  
4 he did not have the obligation or responsibility to  
5 take any further action?

6 A No.

7 Q He is not the person who it would be  
8 inappropriate to not have reported the conversation  
9 with Mr. Kohn?

10 A No.

11 Q As opposed to had such conversations taken  
12 place with respect to Mr. Kohn's supervisor, it would  
13 have been inappropriate for them not to have pursued  
14 the matter further?

15 A Yes.

16 MR. DINH: I have nothing further.

17 MR. IVEY: Do you want to take a break?

18 THE WITNESS: No.

19 EXAMINATION

20 BY MR. IVEY:

21 Q I noticed that you were using the exhibits  
22 that were presented to you while you were being

1 questioned by the Majority side, and there's nothing  
2 wrong with that, but I was curious if you had had a  
3 chance to review the document or refresh your  
4 recollection on the documents before you came in  
5 today.

6 A Yes.

7 Q So you're fairly familiar with the  
8 documents there?

9 A Yes.

10 Q And most of your testimony -- I noticed you  
11 were referring to the documents that were there; is  
12 that correct?

13 A Yes.

14 Q Would it be fair to say that the bulk of  
15 the testimony you just gave is contained in the  
16 documents that are exhibits here?

17 A Yes.

18 Q Is there any relevant testimony that you  
19 can recall that is not contained in those documents?

20 A No.

21 Q Let me back up to the facts at issue here.  
22 As I understand it, your office conducted an



1 investigation with respect to the allegations made by  
2 Mr. Kohn; is that fair?

3 A Yes.

4 Q And your office didn't reach any formal  
5 conclusions as to the allegations Mr. Kohn had  
6 raised; is that correct?

7 A Yes.

8 Q And that was not done because you deferred  
9 your investigation while the Independent Counsel's  
10 investigation was ongoing?

11 A Not only that, but the way we proceed is  
12 when we do an investigation, we don't make a formal  
13 recommendation or conclusion. Basically, we try  
14 to -- generally, we write a report which states the  
15 facts and then it's up to the reader to make the  
16 conclusion and recommendations from there. So even  
17 if we had finished, we would not have made a  
18 conclusion.

19 Q So in absence of the Independent Counsel's  
20 involvement in this matter, who would have been the  
21 decisionmaker?

22 A We probably would have sent this to the

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1 general counsel since it involved attorneys.

2 Q Did you uncover any evidence in your  
3 investigation of documents actually being sent to the  
4 White House?

5 A No.

6 Q None whatsoever?

7 A No.

8 Q So your investigation, then, would be aimed  
9 at determining if there were any -- I better rephrase  
10 it.

11 Are there ethical violations or legal  
12 violations that your investigation was aimed to  
13 uncover?

14 A Yes.

15 Q What would they be?

16 A Well, we would be concerned with the  
17 ethical violations of RTC employees if they were to  
18 provide confidential documents outside of RTC  
19 inappropriately.

20 Q So in this instance, that would have been  
21 if an RTC employee had given these documents to the  
22 White House?



1 A Yes.

2 Q That would have been an ethical violation  
3 and perhaps a statutory violation?

4 A I believe that it may have been.

5 Q But you were just saying you didn't find  
6 any evidence that any documents were sent to the  
7 White House?

8 A Right.

9 Q Even though I understand that your office  
10 doesn't reach conclusions on these matters, it's  
11 unclear to me what action could have been taken in  
12 absence of any violation with respect to the  
13 divulging of confidential information and provision  
14 of documents. Are there other matters?

15 A No. Generally, we do an investigation and  
16 we write a report and send it to someone for action.  
17 There is -- hopefully if we've written the report  
18 right, at the end of the report, that person will  
19 come to a conclusion and take some action that's  
20 necessary. We also send, on occasion, reports,  
21 especially something along these lines, that are for  
22 information only. No action would be necessary for

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1 it. So if we had continued with this, we may have  
2 written a report, which we knew no action would be  
3 necessary.

4 Q If you do an investigation, it makes sense  
5 to write a report regardless of what the facts are?

6 A Right.

7 Q So everyone would have a clear  
8 understanding of what you discovered?

9 A Right.

10 Q I guess my point is, I see an  
11 investigation, but no offense. Am I missing  
12 something?

13 A No. We saw no evidence of a request or  
14 that any documents left RTC.

15 Q Could you explain to me why there was a  
16 seven-month time lag between the allegation and the  
17 alleged date that this took place and when it finally  
18 got to your attention?

19 A No, I really don't. Kohn said that in July  
20 he was on -- he was on active duty or something and  
21 saw the White House contacts television. That jogged  
22 his memory and I think he called back to one of his

1 colleagues and asked him to contact Washington OCOS  
2 to see whether or not the information that he had had  
3 in January had been referred to the Independent  
4 Counsel's office. But other than that, jogging his  
5 memory, no, there's no reason. We uncovered no  
6 reason for the delay.

7 Q Certainly, there was a drumbeat of media  
8 coverage --

9 A Yes.

10 Q -- during that seven months leading up to  
11 the August hearings?

12 A Absolutely.

13 Q Do you know if he was in the country during  
14 that seven-month period?

15 A Yes, he was.

16 Q His handwritten notes, I notice that one of  
17 the documents here -- I think it's 8221, Dana Bedwell  
18 had sent a note to you saying that -- or a memorandum  
19 to you saying he wanted to see if they could have a  
20 handwriting analysis done to see if the notes were  
21 really written contemporaneous to the conversation.  
22 And apparently he was informed that there's no way to

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1 determine that scientifically.

2 A Right.

3 Q Do you recall that memo?

4 A Yes, I do.

5 Q Does this indicate that there was some  
6 question in Ms. Bedwell's mind about when the notes  
7 were written?

8 A Yes, it does.

9 Q And do you know if that had anything to do  
10 with the fact that Mr. Carver wasn't named in the  
11 original notes?

12 A No. I don't believe that that was it.

13 Q What was prompting him --

14 A I believe part of it was -- the main part  
15 of it is that the notes were so neat. If you're in a  
16 conversation, they seem to be extremely neat as if  
17 you're sitting down at a desk or something and  
18 writing.

19 Q As opposed to --

20 A As opposed to --

21 Q -- your regular manner in which you would  
22 take notes in a conversation?

1 A Right, especially if you're not sitting in  
2 a desk and you're sitting in a chair. You may not  
3 have a level place to write, that type of thing. And  
4 also, just a question of whether we could prove  
5 whether they weren't or not -- we were looking for  
6 ways to try to prove this one way or the other.

7 Q Now, let me ask you to step outside of your  
8 role as an RTC investigator or Deputy Assistant  
9 Inspector General, recognizing that the IG doesn't  
10 reach conclusions on these things, but merely states  
11 facts. I'm going to ask you to set all of that  
12 aside, and I see your attorney is squirming in his  
13 chair, but let me put it this way to you.

14 Given the conflict of evidence here, we've  
15 got affidavits on both sides saying contradictory  
16 things, and as far as I can tell, no way to really  
17 corroborate either version of the course of events or  
18 conversations. In your opinion, is there a way that  
19 a resolution could be reached in determining with any  
20 certainty who's actually telling the truth here?

21 A I don't see any.

22 MR. IVEY: I have no further questions.

---

1 EXAMINATION

2 BY MR. DINH:

3 Q You stated earlier that you did not find  
4 any evidence of any documents leaving the RTC to go  
5 to the White House. Besides these interviews, what  
6 steps did you take, if any, to chase that  
7 investigative lead in attempting to document how a  
8 box of documents would have left the RTC to go to the  
9 White House?

10 A We didn't take any steps.

11 Q Did you interview anybody from the White  
12 House counsel's office?

13 A No.

14 Q Would you have had authority to do so?

15 A Yes.

16 Q But you chose not to do so?

17 A Right.

18 Q You interviewed nobody at the RTC  
19 resolutions department other than Greg Smith in  
20 connection with the request that was allegedly made  
21 by that section?

22 A I believe he was the only one.

1 Q And Greg Smith stated that he was not -- he  
2 did not make such a request to Mr. Carver at the  
3 time?

4 A I don't know whether he did or not.

5 Q And did you uncover any evidence or  
6 documentation that documents relating to the Rose Law  
7 Firm traveled from the RTC's offices in Kansas City  
8 to the Washington office of the RTC, specifically the  
9 resolutions section?

10 A We did not as part of this. We had another  
11 investigation involving the Rose Law Firm where  
12 documents went from Kansas City to Washington.

13 Q But it's not related to and not responsive  
14 to the January 14th request allegedly testified to by  
15 Mr. Carver --

16 A Right.

17 Q -- and Mr. Kaufman?

18 A Right. It's totally separate.

19 Q Do you know if Mr. Kaufman -- he stated  
20 that he established these careful procedures in order  
21 to document -- in order to control the flow of  
22 documents relating to Madison Guaranty. Do you know

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1 if he kept a log of requests and any responses or any  
2 actions he took with respect to those requests?

3 A No, I don't.

4 Q His affidavit does not illuminate that to  
5 any degree?

6 A I know he talked about it.

7 MR. IVEY: Which document are you referring  
8 to there?

9 THE WITNESS: The Kaufman statement.

10 MR. IVEY: Is there a Bates stamp number?

11 THE WITNESS: 5700.

12 MR. DINH: It's 5700.

13 MR. IVEY: Thank you.

14 THE WITNESS: He says that he took steps  
15 and that he wanted all inquiries to come through him,  
16 but it doesn't mention a log.

17 BY MR. DINH:

18 Q It does not mention what he does once he  
19 gets an inquiry?

20 A Right.

21 Q You had the record of outgoing calls from  
22 Mr. Carver's office extension --

1 A Yes.

2 Q -- that Mr. Carver provided to you --

3 A Yes.

4 Q -- which indicated the calls to Mr. Smith?

5 A Yes.

6 Q Did you study any phone records or did you  
7 request any phone records from the White House or  
8 specifically from the White House counsel's office  
9 that would have documented or negated any impression  
10 that a phone call was placed to the RTC Kansas City  
11 office?

12 A No.

13 Q Other than the oral interviews of the  
14 relevant persons, some of whom provided sworn  
15 testimony that are conflicting to each other and to  
16 the phone records which it were provided by  
17 Mr. Carver to you, did you take any steps to  
18 document -- to find any documentation in order to  
19 prove one way or the other the allegations made by  
20 Mr. Kohn and Mr. Newmark?

21 A No.

22 Q Is there anything else relevant to this

1 investigation that you'd like to tell us about?

2 A No, just that although we did quite a bit  
3 of work, talked to a lot of people in a short period  
4 of time and really felt there was not much more to  
5 do, if anything, when we took it to the Independent  
6 Counsel, that was the end of it, and they asked us to  
7 stop.

8 Q Do you have subpoena power?

9 A Yes, we do, documentary.

10 Q Documentary subpoena power?

11 A Yes.

12 Q And they're enforceable in federal district  
13 court?

14 A Yes.

15 Q You referred me to -- you referred earlier  
16 to the reasons why you felt it appropriate to refer  
17 the matter to the Office of Independent Counsel, and  
18 you stated that it was in connection with the ongoing  
19 investigation at that time by the Office of  
20 Independent Counsel into the contacts between the  
21 White House and the Treasury Department, specifically  
22 Mr. Altman?



1 A Yes.

2 Q Let me refer you to exhibit number Bates  
3 stamp RI 0104, and RI indicates they kept from the  
4 files of Richard Iorio, to whom we've talked to  
5 earlier. And it's an E-mail from Jim Dudine to  
6 Richard Iorio dated Friday, January 14, 1994,  
7 11:06:39 CST. January 14, 1994 is, of course, the  
8 date of the alleged Kaufman/Kohn contact.

9 Can you for the record read that short  
10 E-mail for us?

11 A "I'm sending this E-mail to save on the  
12 phone bill. In preparation for a briefing of CEO  
13 Altman on the Madison criminal referrals, could you  
14 produce or have you on hand, a brief summary of each  
15 referral, in plain English that tells the story in a  
16 way that anyone could quickly grasp the substance of  
17 the matter? Sound bytes, if you will."

18 Q Have you ever seen this E-mail before?

19 A I don't think so.

20 Q Have you ever heard of its existence or of  
21 the information that it imparts that you have come to  
22 learn just now?

1 A I have a vague, vague memory, but no, not  
2 really.

3 Q At the time you referred this matter, that  
4 you determined there was enough evidence to refer  
5 this matter to the Office of Independent Counsel, you  
6 did not have this E-mail dated the same day as the  
7 alleged contact between the White House and the RTC?

8 A Right. No.

9 Q We talked about earlier, and I had to be  
10 forced to make a representation as to the relevance  
11 of January 12, 1994. You stated that you did not  
12 understand the significance of that. Let me ask you  
13 to read FBI 1829, a letter dated January 24, 1994  
14 addressed to the Honorable Janet Reno from Bernard  
15 Nussbaum, Counsel to the President and ask you to  
16 study that.

17 A Okay.

18 Q And would you describe that letter to us,  
19 for the record.

20 A Yes. Counsel to the President is  
21 requesting the Attorney General to appoint a special  
22 counsel to conduct an independent investigation of

1 the Whitewater matter.

2 Q And the Whitewater matter would include the  
3 subject matters we've been talking about relating to  
4 Madison Guaranty Savings & Loan Association and the  
5 representation by Rose Law Firm thereof?

6 A Yes.

7 Q And you mentioned earlier that you had not  
8 interviewed anybody from the White House counsel's  
9 office?

10 A That's correct.

11 Q And you have no knowledge as to who made  
12 the request allegedly by Mr. Kohn?

13 A Yes, I do have no knowledge.

14 MR. DINH: Other than that, I have nothing  
15 further. Thank you.

16 MR. GIBSON: Before we go off the record, I  
17 have a couple of clarifying things that I just wanted  
18 to point out.

19 EXAMINATION

20 BY MR. GIBSON:

21 Q The first is that you had the authority to  
22 interview White House counsel. Do we have

1 jurisdiction over anybody in the White House -- in  
2 other words, can we compel them to talk to us in any  
3 way?

4 A No.

5 Q Do we have testimonial subpoena power?

6 A No.

7 Q Do we have the power to subpoena documents  
8 from any other government agency?

9 A Yes -- government agency, sorry. No.

10 Q From a government agency.

11 A Excuse me.

12 Q That's quite all right. Were somebody in  
13 another government agency to talk to us, would those  
14 conversations, therefore, be voluntary?

15 A Yes.

16 Q So when you say that we had the authority  
17 to do so, are you saying that within the context of  
18 citing authority in our investigation to conduct  
19 those interviews, we could do so, but we do not have  
20 the authority to require anybody to do anything or  
21 have any particular investigative tool to do it?

22 A Yes.

1 Q Can you explain to me, just very briefly,  
2 why did we decide not to interview anybody at the  
3 White House?

4 A I didn't believe there was enough merit  
5 to -- that there had been a request to start asking  
6 questions along those lines.

7 MR. GIBSON: I don't have any further  
8 questions. Thanks.

9 EXAMINATION

10 BY MR. DINH:

11 Q Let me follow up with respect to clarifying  
12 the subpoena issue. So you do not have legal  
13 authority, that is, legal power to compel the  
14 production of documents from other government  
15 agencies?

16 A Yes, that is correct.

17 Q You do not have power, even though you do  
18 have subpoena power for documents from individuals --

19 A Yes.

20 Q -- private individuals --

21 A Yes.

22 Q -- but not from government agencies. But

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1 would you have power to subpoena documents to  
2 individuals operating in their official capacity?

3 A I believe the answer is yes. Well, it  
4 depends --

5 MR. IVEY: Are you not sure?

6 MR. DINH: You're not sure. I won't ask  
7 you to speculate. That is a legal issue and we can  
8 certainly treat it as such.

9 BY MR. DINH:

10 Q You have no power to subpoena -- no legal  
11 authority to subpoena and enforce a subpoena to the  
12 White House for any phone records or other  
13 documentary evidence?

14 A No.

15 Q But you do with respect to the RTC,  
16 internal RTC, do you?

17 A Well, we have the right to all RTC records.

18 Q Okay, because you are within the RTC  
19 inspection unit?

20 A Inspector General's allows us to look at  
21 any records within the RTC.

22 Q But you have no subpoena power for the

1 testimony of witnesses with respect to anybody?

2 A No.

3 Q So the only power you have to subpoena  
4 documents that is required to compel production of  
5 documents is over individuals?

6 A And --

7 Q And private corporations?

8 A Yes.

9 MR. DINH: I'm sorry. Thank you very  
10 much. That's all I have. Thank you very much.

11 MR. IVEY: I have nothing further.

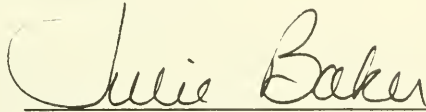
12 (Whereupon, at 2:20 p.m., the deposition  
13 was concluded.)

14 -----  
15  
16 PATRICK I. NOBLE  
17  
18  
19  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 30, 1997



DEPONENT PATRICK I. Noble

## ERRATA

[illegible]

**DEPOSITION OF KENNETH R. SCHMALZBACH  
IN RE: S. RES. 120**

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**VOLUME I**

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**FRIDAY, OCTOBER 20, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of KENNETH R. SCHMALZBACH, called for  
examination pursuant to notice of deposition, at 9:45 a.m. in Room  
640-A of the Hart Senate Office Building, before PATRICIA A.  
ZUBER, a Notary Public within and for the District of Columbia,  
when were present:

MICHAEL CHERTOFF, Esq.  
Majority Special Counsel  
MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

BARBARA C. STERGIS, Esq.  
BRADLEY A. BUCKLES, Esq.  
Office of the General Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC 20220  
On behalf of the Deponent.

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## EXHIBITS

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| KENNETH R. SCHMALZBACH<br>DEPOSITION NUMBER | IDENTIFIED |
|---|------------|
| Exhibit KS-1 .....                          | 90, 3777   |

## P R O C E E D I N G S

Whereupon,

KENNETH R. SCHMALZBACH

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. O'CALLAGHAN:

Q Good morning. My name is Michael O'Callaghan. I'm counsel for the majority in the Committee.

This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the banking committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association; Capital Management Services, Incorporated; the Arkansas Development Finance Authority, and other related matters.

Section (1)(b)(2)(e) of Senate Resolution 120 authorizes investigation and public hearings into whether "the report issued by the Office of Government Ethics on November 1st, 1994 or related

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transcripts of deposition testimony, one, were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing and Urban Affairs, pursuant to Senate Resolution 229; or two, were used to communicate to White House officials, or to others, confidential information related to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation. And this will primarily be the focus of today's deposition.

Mr. Schmalzbach, when were you requested to testify?

A When was I what?

Q Requested to testify.

A You mean in this?

Q Correct.

A Actually I learned about it, I think a week ago last Friday. I was up in New York fishing with my son and my deputy called me and told me. I've actually seen the letter, but I don't recall the date of the letter and I assume the department received it that Friday.

1 Q This deposition is in advance of public  
2 hearings in November or late October, which you'll  
3 likely be asked to testify at the hearings.

4 I'm going to ask you a series of questions  
5 today and ask you to testify under oath, which you've  
6 already been sworn in. If you don't understand a  
7 question, let me or Mr. Portnoy know and we'll  
8 rephrase the question. If you need a break, let us  
9 know as well.

10 The stenographer will prepare a record of  
11 questions and answers. The deposition will be  
12 treated as committee confidential until the  
13 commencement of the hearings and we normally request  
14 that witnesses keep the substance of the discussions  
15 in the deposition confidential.

16 Prior to the hearings, you will receive a  
17 letter from the Committee telling you that you may  
18 come to the Senate to review the transcript of your  
19 deposition and make note of any corrections for  
20 transcription on an errata sheet. If you are called  
21 to testify at the public hearings, you will be  
22 permitted to have a transcript copy four days in

1 advance of your testimony.

2 You may be represented by counsel. Are you  
3 represented by counsel today?

4 A The department's interests here are being  
5 represented by Ms. Stergis and Mr. Buckles.

6 MR. O'CALLAGHAN: Would you please identify  
7 yourselves for the records.

8 MS. STERGIS: I'm Barbara C. Stergis,  
9 general counsel's office, Department of the Treasury.

10 MR. BUCKLES: And I'm Bradley A. Buckles,  
11 general counsel's office, Department of the Treasury.

12 MR. O'CALLAGHAN: Objections to the form of  
13 questions will be noted for the record. Counsel may  
14 object on grounds of privilege or relevance, and the  
15 Committee Chairman may rule on objections where the  
16 witness refuses to answer a question.

17 MS. STERGIS: Before we start, I wanted to  
18 repeat the statement we made yesterday with  
19 Mr. McHale. The Treasury does not accept the  
20 condition that the witness must maintain  
21 confidentiality as to his testimony.

22 MR. O'CALLAGHAN: And also just for

1 clarity, it's not a condition that's being imposed;  
2 it's a request by the Committee to keep the  
3 information confidential.

4 MS. STERGIS: Understood.

5 BY MR. O'CALLAGHAN:

6 Q Okay. Could you please state and spell  
7 your full name for the record.

8 A Kenneth Robert Schmalzbach. Presumably I  
9 only need to spell the last name.  
10 S-c-h-m-a-l-z-b-a-c-h.

11

12

13 Q What is your present business address?

14 A 1500 Pennsylvania Avenue, Northwest,  
15 Washington, D.C. 20220.

16 Q Who do you currently work for?

17 A The Treasury Department.

18 Q What's your position there?

19 A Assistant general counsel administrative  
20 and general law.

21 Q Can you please give me a review of your  
22 employment history since you graduated from college.

1 A I graduated from Cornell University in  
2 1969. I worked for the telephone company as a  
3 salesperson until September of 1970; in the middle of  
4 my employment at the telephone company, I did roughly  
5 four months of active duty with the U.S. Army, and  
6 then went into reserve status thereafter. In  
7 September of 1970, I started at the George Washington  
8 University law school. Graduated from GW in May of  
9 1973. Immediately went to work for a unit of the  
10 Department of the Treasury called the office of the  
11 director of practice, which was then part of the  
12 Office of General Counsel.

13 Sometime in 1977, I became a staff attorney  
14 in the office that I now head. In the spring of  
15 1980, I was appointed as the chief counsel of the  
16 financial management service, another bureau of the  
17 Department of the Treasury. And on October 21, 1985,  
18 I was selected for my current position.

19 Q During the period of March through August  
20 1994, you were in your current position; is that  
21 correct?

22 A Correct.



1 Q Who were your supervisors during that time  
2 period?

3 A I report directly to the deputy general  
4 counsel who at the time was Dennis I. Foreman.

5 Q And who did he report to?

6 A The general counsel who at the time was  
7 Jean Hanson.

8 Q And who did you supervise during that time  
9 period?

10 A Well, my direct reports were three senior  
11 executives. The chief counsel of the Bureau of the  
12 Mint, the chief counsel --

13 Q Could you give names too?

14 A Oh, I'm sorry. Ken Gubin, G-u-b-i-n. The  
15 chief counsel of the Bureau of Engraving and  
16 Printing, Carrol Kinsey; K-i-n-s-e-y, that's  
17 C-a-r-r-o-l, Kinsey. And Steve McHale, the deputy  
18 assistant general counsel for -- actually the title  
19 back then was administrative and general law. The  
20 title changed a year ago.

21 Q The name of the office changed; is that  
22 right?

---

10

1 A The name of the office changed.

2 Q Mr. McHale is your deputy and the other two  
3 people were chief counsels?

4 A Of Treasury bureaus. Each of those people  
5 in turn have a number of attorneys, between five and  
6 nine attorneys each, who report to them.

7 Q Are you aware of the request made by, the  
8 Committee requests, plural, to the Department of  
9 Treasury in connection with this deposition?

10 MS. STERGIS: Document requests.

11 MR. O'CALLAGHAN: Correct, yes.

12 THE WITNESS: Yes.

13 BY MR. O'CALLAGHAN:

14 Q Did you conduct any searches for responsive  
15 documents, notes, reports, memoranda?

16 A Yes.

17 Q Have all responsive documents been  
18 produced?

19 A Yes.

20 Q Are you aware of any documents that were  
21 under your possession in a prior time that were  
22 responsive to the request that have since been lost,

1 destroyed, or otherwise disposed of?

2 A You want to repeat that question.

3 Q Sure, sure. It's a little confusing. I'm  
4 basically asking you, would the documents that were  
5 in existence that were responsive to the requests  
6 that are no longer in existence that you are aware  
7 of, documents that --

8 A I'm not aware of any documents that have  
9 been lost or destroyed.

10 Q Do you speak to anyone other than your  
11 counsel prior to this deposition regarding the  
12 deposition?

13 A Regarding the deposition? Well, for the  
14 last 20 months, and certainly for the last 14 months,  
15 we have anticipated that we might be asked questions  
16 about how we had prepared Secretary Bentsen for  
17 testimony last summer. Certainly there have been  
18 discussions.

19 Q Specifically in preparation for today, did  
20 you speak with anyone?

21 A I spoke with my attorneys.

22 Q Other than counsel?

1 A I spoke with my deputy.

2 Q And is that Mr. McHale?

3 A Yes.

4 Q What did you speak to Mr. McHale about?

5 A I said good morning to him this morning. I  
6 talked about the good old boys network. I talked  
7 about -- not network. An issue between Leach and the  
8 office of the comptroller of the currency -- when he  
9 returned to the office last night I roughly said  
10 jeez, it went a long time, and he said yes, it did.

11 Q Did you discuss his testimony?

12 A No.

13 Q Did you have discussions about what your  
14 testimony might be here today?

15 A No.

16 Q Did you review any documents to prepare for  
17 the deposition?

18 A Excuse me?

19 Q Did you review any documents to prepare for  
20 the deposition?

21 A Sure.

22 Q And what did you review?

1 A There are a lot of documents. I'm not sure  
2 how to answer that question.

3 MS. STERGIS: You might want to phrase the  
4 question, did he review the Treasury production.

5 BY MR. O'CALLAGHAN:

6 Q Sure, I can ask that. Did you review --

7 A Yes.

8 Q The entire production?

9 A I don't know whether it's the entire  
10 production or not. It's a lot of documents. I think  
11 it's been represented to me that it's the entire  
12 production, but I had no responsibility for the  
13 production, so I can't tell you that.

14 Let me -- I produced the records in my  
15 immediate office. I produced the records in my  
16 larger office, but I didn't produce, I had no  
17 responsibility for the production of records from  
18 other Treasury offices.

19 Q Would you please describe the structure of  
20 the assistant general counsel's office for general  
21 law and ethics?

22 A There are a total of 14 people. I'm the

1 general counsel -- the assistant general counsel.  
2 Steve McHale is my deputy, reports to me. Each of  
3 the other eight attorneys reports to Steve. One of  
4 the attorneys is the senior counsel for ethics, he  
5 has an ethics specialist and a clerical assistant who  
6 report to him.

7 I have a secretary that reports directly to  
8 me, and Steve has a secretary that reports directly  
9 to him. But the secretaries assist the whole office.

10 Q There are two secretaries for the whole  
11 office?

12 A Right -- well, and the clerical assistants  
13 to the ethics senior counsel. So a total of three  
14 clerical assistants in the whole office.

15 Q Was the structure of the office any  
16 different during the time period March through August  
17 of 1994?

18 A I don't remember when we hired the ethics  
19 specialist. Prior to hiring her, that position was  
20 a -- a fourth clerical assistant position. It was  
21 converted. She now reports, as I said, to the senior  
22 counsel for ethics, and I'm not sure exactly when

1 that change was put into place.

2 Q So it was within the last two years that  
3 that position was created?

4 A I'm not even sure that it was within the  
5 last two years. It might have been slightly before  
6 that. It was -- there's a long history to it, I'm  
7 not sure if it's of any interest to anyone here.

8 We had been thinking of doing that  
9 conversion of a clerical assistant to an ethics  
10 specialist for a long time. And it took us a while  
11 to actually make the decision to do it, and then a  
12 while longer to fill the position. I just don't  
13 remember exactly when it happened.

14 Q And what's the name of the ethics  
15 specialist?

16 A Mary Grace Tillotson.

17 Q What are the names of the clerical staff  
18 for the time period March through August of 1994?

19 A Jean Long, Bernetta Smith, and Leizel  
20 Mosquera, M-o-s-q-u-e-r-a. Leizel is L-e-i-z-e-l.

21 Q Okay. Again for the time period of March  
22 through August of '94, your title was assistant

1 general counsel for the office of administrative and  
2 general law; is that right?

3 A Right.

4 Q It's a tough one to remember. During that  
5 time period, what was the office of administrative  
6 and general law's relationship with the office of --  
7 specific office of general counsel?

8 A It's part of it.

9 Q And how did it fit within the structure of  
10 the Office of General Counsel?

11 A I described to you previously that I  
12 reported to the deputy general counsel who reported  
13 to the general counsel.

14 Q And with respect to the Office of General  
15 Counsel total, how many offices similar to yours were  
16 there during that time period?

17 A Including mine, five; although one is  
18 headed by an associate general counsel, not an  
19 assistant general counsel. The assistant general  
20 counsel is a statutory title. There weren't enough  
21 to cover the fifth office.

22 Q And once again, during the same time

1 period, what was the relationship of your office with  
2 the office of the executive secretary?

3 A There's -- we're just all part of main  
4 Treasury. There's no reporting relationship.

5 Q Did you provide any services or do any work  
6 for the office of the executive secretary?

7 A Sure. When there were Treasury orders that  
8 affected their organization, my staff reviewed them.

9 Q Okay. And when you --

10 A When ethics questions came up concerning  
11 correspondence from the Secretary, correspondence to  
12 the Secretary, exec would frequently come to us for  
13 advice.

14 Q And when you say Treasury orders that  
15 affected the office, what's a Treasury order?

16 A Treasury order is a, it's sort of a  
17 basic -- it's not a -- it may or may not be published  
18 in the Federal Register depending on who it affects,  
19 but it's a basic organizational or policy document  
20 that's signed by the Secretary.

21 Q Okay. And with regard to assisting with  
22 ethics questions, did you provide formal reports or

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18

1 how was the --

2 A It depends.

3 Q -- the advice usually given?

4 A It depends on what the question is and who  
5 is asking it. There is no stock answer for that.

6 Q During the time period March through August  
7 '94, do you recall specific services ever provided  
8 by your office to the office of the executive  
9 secretary?

10 A No, not to the office of the executive  
11 secretary. Ed Knight who at the time was the  
12 executive secretary was tasked by the Secretary with  
13 handling the department's response to Independent  
14 Counsel Fiske's subpoena, and some of my staff  
15 assisted in gathering those documents and producing  
16 them to Fiske.

17 They performed a similar function with  
18 respect to the Senate and House Banking Committee  
19 document request last summer -- I'm sorry, two --  
20 summer of '94.

21 Q And how did it come to be that people from  
22 your office were chosen to assist Mr. Knight with



1 help in the document productions?

2 A That's a difficult question to answer  
3 because I don't really know the answer to it. The  
4 only thing I can suggest is that, for the last five  
5 years or so, the general counsel has looked to my  
6 office to develop expertise and experience in  
7 executive document requests and executive privilege  
8 issues, and things like that. So it may have been  
9 that that was a reason that we were looked to, but  
10 why, I don't have the answer to that question.

11 Q Did you receive a request from anyone to  
12 have your staff assist Mr. Knight?

13 A Well, it happened, so I assume I received a  
14 request.

15 Q I was just trying to get an idea for the  
16 mechanics of how it was set up.

17 A I don't -- I don't know the mechanics of  
18 how it was set up.

19 Q Okay. You stated that Mr. Knight was  
20 tasked with handling the department's response to the  
21 independent counsel's subpoena, Senate and House  
22 committee's document requests. Was he asked to

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1 handle documents response with regard to any other  
2 document request?

3 (Witness conferred with counsel.)

4 MS. STERGIS: What is the relevance of any  
5 other projects Mr. Knight may have worked on?

6 BY MR. O'CALLAGHAN:

7 Q I'm just wondering if he was -- the  
8 relevance is, the specific question I can ask you is,  
9 whether he was asked to handle the department's  
10 response to any document requests that were done in  
11 connection with the Treasury IG's investigation and  
12 RTC IG's investigation with regard to the OGE  
13 report. It's a pretty relevant question.

14 A Okay. State the question again. I was  
15 afraid you were getting into something else.

16 Q No, it was more of a general -- it was just  
17 a general question, whether or not he was involved in  
18 document production for any --

19 A I know, but there are some --

20 Q You can answer generally and I can ask you  
21 specifically. That's what I was working my way  
22 toward.



1       A    State the question again.  
2       Q    The question was whether, during the time  
3 period that we're discussing --  
4       A    Which again is March to August.  
5       Q    -- March to August of 1994, whether  
6 Mr. Knight was tasked with handling the department's  
7 response to any other document requests?  
8       A    I don't know whether he was tasked.  
9       Q    Was he involved?  
10      A    Yes, yes.  
11      Q    And what document request was he involved  
12 with?  
13      A    He was involved in a request from White  
14 House counsel.  
15      MR. O'CALLAGHAN: Excuse me. Off the  
16 record.  
17           (Discussion off the record.)  
18      BY MR. O'CALLAGHAN:  
19      Q    Why don't we go back on the record.  
20           I asked you whether, right before we went  
21 off the record, whether Mr. Knight had been involved  
22 with any other document request --

1       A    Yes.  
2       Q    -- during March through August of 1994?  
3       A    Yes.  
4       Q    And what request was he involved with?  
5       A    A request from White House counsel for,  
6 roughly speaking, documents related to the  
7 Treasury-White House contacts. I do not actually  
8 recall the specifics of their request, a request from  
9 the Inspector General for the documents that we had  
10 turned over to the independent counsel.  
11      Q    Okay. Was this a request to Treasury with  
12 respect to the Inspector General's office?  
13      A    Yes.  
14      Q    With regard to the request from the White  
15 House counsel's office related to the Treasury-White  
16 House contacts, was that a request in connection with  
17 investigation being done by the White House?  
18      A    As we understood it, yes; by the White  
19 House counsel's office.  
20      Q    Did anyone in your office assist with that  
21 document production?  
22      A    Yes.

1 Q And who from your office assisted in that?

2 MR. BUCKLES: Mike, I'd like to raise a  
3 point here. Again, we're off chasing these records,  
4 and I don't see how those records relate to the  
5 report of the IG or the report of the Office of  
6 Government Ethics or the deposition transcripts  
7 developed by the IG.

8 Those are records that are separate and  
9 apart from either one of those, and I don't -- I can  
10 understand why you need to look at them a little bit,  
11 but if we're going to start chasing those records  
12 that's an entirely different matter than the OGE's  
13 report and the deposition transcripts.

14 MR. O'CALLAGHAN: Are you objecting to the  
15 question?

16 MR. BUCKLES: Well, I'd like to know what  
17 the relevance is to what we're looking at here. I  
18 know you have to pursue some of this stuff just to  
19 put stuff in context, but I don't understand the  
20 relevance.

21 MR. O'CALLAGHAN: To put things in context,  
22 to see also what document reviews were being

1 conducted by the offices involved in Treasury, to  
2 see, you know, what documents were being provided to  
3 what people in connection with the White  
4 House-Treasury contacts, and also develop the record  
5 with regard to what the relationship was between the  
6 different agencies involved with the investigation.

7 MS. STERGIS: I had understood the  
8 resolution to ask whether the deposition transcripts  
9 were used to communicate confidential RTC information  
10 but not to reach the question of fraud or document  
11 requests.

12 MR. O'CALLAGHAN: Well, Ms. Stergis, the  
13 resolution deals with that, but I'm not going to  
14 limit myself to that one single question. In order  
15 to develop a record, to understand the circumstances  
16 that were as they existed during the relevant time  
17 period, I'm going to have to ask other questions that  
18 will develop the relationships between given people  
19 involved who had access to the transcripts and also  
20 received the transcripts that's what I'm attempting  
21 to do and that's what the relevance is.

22 BY MR. O'CALLAGHAN:

1 Q Sorry. I believe the standing question was  
2 with regard to the document production related to the  
3 requests made by White House counsel's office, who in  
4 your office --

5 A Actually there was not a document  
6 production at that time.

7 Q There was a request?

8 A There was a request in May and the White  
9 House came and reviewed some of the documents. We  
10 withheld some of the documents. Again, the Fiske  
11 production defining the total universe --

12 Q Okay.

13 A -- so that was inspection of the documents  
14 being on site at Treasury.

15 Q And who in your office coordinated the  
16 inspection?

17 A Steve McHale.

18 Q Did you have any involvement?

19 A Steve talked to me from time to time about  
20 what he was doing.

21 Q As he would in his normal reporting chain  
22 of his activities?

1 A You have to be a little bit careful about  
2 reporting chain here. Steve is -- I have a great  
3 deal of confidence in Steve, and to a substantial  
4 extent, the office is run on a collegial basis. I  
5 give him substantial leeway to make his own  
6 judgments. If he has any discomfort or question  
7 about a judgment on any kind of question, he'll come  
8 to me, and he makes very good calls about whether he  
9 needs to talk to me or not.

10 Q With regard to other than just having  
11 Mr. McHale report to you about or speak with you  
12 about organizing the inspection or anything connected  
13 with the request, did you have any involvement?

14 A Well, I actually don't remember what -- I  
15 may have talked to other people about it. I don't  
16 remember specific conversations. Other people within  
17 the Office of General Counsel.

18 Q Did you have any discussion with anyone at  
19 the White House with regard to the request and the  
20 inspection?

21 A I'm not sure I did have any direct  
22 conversation with anyone at the White House.

1 Q Did you have any indirect communication?

2 A I'm not sure that I talked to anyone at the  
3 White House about that document production, that  
4 access.

5 Q Other than specific conversations, did you  
6 exchange documents, communications other than  
7 conversations?

8 A Not that I recall, regarding White House  
9 counsel's access to Treasury documents.

10 Q Okay. And when was this request made?

11 A It was initially made at the end of April.  
12 It was renewed on May 12th, I believe.

13 Q And who was the request made to?

14 A It was a written request. I actually don't  
15 recall who the letter went to.

16 Q Do you recall who the letter was from?

17 A Yes, it was from Joel Klein.

18 Q Did you have any contact with Mr. Klein  
19 during the period March through August 1994?

20 A I met him once.

21 Q Where did you meet him?

22 A I'm not altogether sure. Somewhere in the

1 Treasury Department.

2 Q Was it in relation to anything involving --

3 A It was --

4 Q -- the investigation of White  
5 House-Treasury contacts?

6 A No, it was just hi, this is Joel Klein,  
7 this is Ken Schmalzbach.

8 Q Did you have dealings with anyone at the  
9 White House during the period March through August  
10 1994?

11 A Yes.

12 Q Who did you have dealings with during that  
13 time period?

14 A Primarily Jean Sherbourne.

15 Q Anyone else over there?

16 A I --

17 Q When I say "over there," I mean the White  
18 House.

19 A I talked far, far less frequently to Sheila  
20 Cheston. And there was also an Air Force sergeant  
21 whose name escapes me that I talked to a couple of  
22 times. I think she was like a paralegal.

1 Q Did you have dealings with Ms. Sherbourne  
2 or Ms. Cheston with respect to any investigations  
3 involving White House-Treasury contacts?

4 A They were assisting the special counsels to  
5 the president Lloyd Cutler in conducting an  
6 investigation. That was the reason that they talked  
7 to us.

8 Q During the period March through April 1994,  
9 how many contacts did you have with either  
10 Ms. Sherbourne or Ms. Cheston?

11 A None. None that I remember. I don't think  
12 I even met them or knew of their existence in that  
13 time frame.

14 Q When did you first meet either one of them?

15 A Probably sometime in June.

16 Q Had you had any communication with them  
17 previous to that?

18 A I didn't -- I'd never heard of them.

19 Q And how did you first meet --

20 A I don't remember.

21 Q -- Ms. Sherbourne or Cheston?

22 Was it in connection with a specific

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1 matter?

2 A It was in connection -- I don't remember.

3 Q Did you have contacts during March through  
4 August of 1994 with anyone other than Ms. Sherbourne  
5 and Cheston in the White House?

6 A I met Mr. Cutler once, must have been for  
7 20 seconds.

8 Q When was that?

9 A Sometime last summer, I think. Certainly  
10 sometime last summer, but I don't really remember  
11 when --

12 MS. STERGIS: '94?

13 THE WITNESS: Right, '94.

14 BY MR. O'CALLAGHAN:

15 Q Summer of '94. Where did you meet  
16 Mr. Cutler?

17 A At the Treasury Department.

18 Q And how did you come to meet him?

19 A I was wherever I was and he happened to be  
20 there. And I think it was probably Ed Knight that  
21 introduced me, but I don't actually, specifically  
22 remember that. I'm just not sure who else it could



1 have been.

2 Q Did you meet him in the hallway or in  
3 someone's office?

4 A My sense of it is that it was in someone's  
5 outer office, and it may have been the general  
6 counsel' outer office.

7 Q Were there other people there when you met  
8 him?

9 A I don't know.

10 Q But you say you think Ed Knight might have  
11 introduced you?

12 A It's possible. I don't know anyone else  
13 who would have.

14 Q And why do you say that?

15 A Because -- I don't know. I just can't  
16 think of anyone else who would know Mr. Cutler that  
17 would introduce me to him.

18 Q How does Mr. Knight know Mr. Cutler?

19 A I don't know.

20 Q How do you know they know each other?

21 A Because in working with White House counsel  
22 on their request for Treasury documents that they

1 needed for their investigation, they were dealing  
2 with Mr. Knight, as far as I know. I just don't know  
3 whether Ed knew Cutler from somewhere else.

4 Q You don't know if he knew him previously?

5 A I have no idea. Certainly knew of him.  
6 Everybody knew of him.

7 Q Previous to March of 1994, how many times  
8 had your office been requested to coordinate document  
9 requests? If you don't have an exact number, you can  
10 approximate.

11 A I don't know that we had been asked to  
12 coordinate document requests. We had been consulted  
13 with respect to numerous document requests. BCCI,  
14 BNL, whatever else Treasury had been involved in from  
15 1991 going forward.

16 Q What is the relationship of the Treasury's  
17 Office of Inspector General with the Office of  
18 General Counsel?

19 A The Office of General Counsel furnishes  
20 legal services to the Office of Inspector General,  
21 through the counsel to the Inspector General.

22 Q Do they have other than -- the counsel to



1 Inspector General, that's provided by the Office of  
2 General Counsel; is that correct?

3 A Right.

4 Q Is there any other relationship between the  
5 two offices?

6 A I'm not sure I understand what you mean.

7 Q Do they have any interaction, do they  
8 provide -- other services to each other?

9 A Well, the Inspector General conducts  
10 audits, investigations. The IG conducted an audit of  
11 Treasury's ethics program, I don't know, two, three,  
12 four years ago. The IG occasionally investigates  
13 allegations against people in the legal division.  
14 The legal division is all the lawyers in Treasury.  
15 Office of General Counsel is main Treasury, and from  
16 time to time, the IG has submitted reports of  
17 investigations about people within the legal division  
18 to the general counsel or the deputy general counsel.

19 Q I'm sorry. I didn't realize there is a  
20 difference between -- the legal division encompasses  
21 all the attorneys?

22 A IRS, ATF, Customs, Federal Law Enforcement

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1 Training Center. There are 13 Treasury bureaus, each  
2 of which has their own legal or chief counsel. They  
3 all report to the general counsel.

4 (Discussion off the record.)

5 BY MR. O'CALLAGHAN:

6 Q You said the entire legal division, all the  
7 offices comprise the legal division is comprised of,  
8 they all report to the general counsel's office?

9 A Or to -- well, actually the relationship  
10 for the office of comptroller of the currency and the  
11 office of thrift supervision has gotten -- has been  
12 changed over the last four or five years, and I'm  
13 really not in a position to speak to the details of  
14 that, because I don't know them.

15 But aside from those offices, each chief or  
16 legal counsel reports either directly to the general  
17 counsel, or through the deputy general counsel to the  
18 general counsel.

19 Q Okay. Does the Office of Inspector General  
20 at Treasury provide the Office of General Counsel  
21 with ongoing reports of investigations that are being  
22 conducted?

1 A Of people in the legal division?

2 Q Just in general, being done by the Office  
3 of Inspector General.

4 A I don't know.

5 Q And how about people in the legal division?

6 A Sure, because the way -- when there is an  
7 allegation, say, of misconduct made by someone  
8 against a lawyer in the legal division, the Inspector  
9 General investigates it. The responsibility for  
10 taking any management action as a result of that  
11 investigation is the general counsel's.

12 Q So they're usually kept apprised -- here is  
13 the question. Are they usually kept apprised of  
14 investigations as they're being conducted?

15 A I don't know. I am not kept apprised as  
16 they are being conducted. I am occasionally asked  
17 for advice when the general counsel gets such a  
18 report about what does it mean.

19 Q But usually after the report's been  
20 completed?

21 A As far as I know. Actually there may be a  
22 process. It occurs to me from time to time I have

1 received questions from the deputy general counsel as  
2 issues came up in the course of an investigation  
3 where the IG had, either the IG or the office who had  
4 an individual under investigation, had asked a  
5 question.

6 Q And what are the questions? What was the  
7 form of the questions, what were they -- what was the  
8 advice that was being sought?

9 A There was a -- the one that I specifically  
10 remember must have been three or four years ago. The  
11 IG was looking at something, I don't remember what it  
12 was, that an IRS attorney out in, I don't know,  
13 Arizona or somewhere was alleged to have done. And  
14 the IG showed up to either talk to the employee or  
15 examine the employee's computer or something without  
16 having given any advance notice to the chief counsel  
17 of the IRS.

18 The chief counsel of the IRS understood  
19 that the IG had an arrangement that, before the IG  
20 went in to talk to an employee somewhere in IRS, the  
21 chief counsel or someone in the chief counsel's  
22 office would get notice, and there was a question

1 about how that should be handled.

2 Q Okay. Generally how much interaction does  
3 your office normally have with the Office of  
4 Inspector General?

5 A A fair amount.

6 Q Could you characterize the nature of the  
7 interaction that generally occurs?

8 A Sure, it's professional.

9 Q Other than being professional, could you  
10 characterize what specific services or tasks or  
11 services or tasks that are provided to you that are  
12 either office to each other or whether there's  
13 assistance given by one office, what's --

14 A Both ways. It's essentially consultative  
15 both ways. I'll give you an example. Back in 1987,  
16 one of Treasury's bureaus whose accounting records  
17 really were not in very good shape was accused of  
18 having violated the Anti-Deficiency Act. One of the  
19 subjects my office handled is fiscal law, budget  
20 appropriations law. And there was a question as to  
21 assuming that this -- well, it was unclear whether,  
22 from its accounting records, whether the bureau had

1 in fact incurred obligations greater than its  
2 appropriations. The accounting records reflected  
3 that they had.

4 The question was, A, were the accounting  
5 records accurate; and B, if they were not accurate,  
6 does the fact that they had written down an  
7 obligation, even if a lawful obligation had not been  
8 incurred, does that constitute a violation of the  
9 Anti-Deficiency Act.

10 And the IG's counsel and I, and in fact  
11 some of the IG's -- I don't know whether it was an  
12 investigation or an audit, but the IG program people  
13 who were working on it and I spent a great deal of  
14 time trying to figure out what the legal answer was.  
15 We went and talked to GAO. It was just, we were  
16 assisting the IG in trying to resolve this issue of  
17 fiscal. That's the kind of thing.

18 Q So providing legal consultation and  
19 analysis; is that a fair characterization?

20 A That was one, sure. I also worked with the  
21 counsel to the Inspector General in 1989, when  
22 Treasury got a statutory Inspector General, on

1 drafting the Treasury order that the Secretary would  
2 issue to reflect the IG's place in the organization.

3 Q Okay. Has your office ever assisted the  
4 Office of Inspector General in controlling documents  
5 in the conduct of an investigation?

6 MS. STERGIS: Could you repeat the  
7 question, please? I didn't hear it.

8 BY MR. O'CALLAGHAN:

9 Q Did you understand the question?

10 A I'm not sure. Assist them in controlling  
11 documents.

12 Q Just assist them in document production,  
13 handling documents.

14 A Yeah, their -- what the hell was it, there  
15 was some Congressional document request, I think it  
16 may have come from Congressman Barnard from the House  
17 Banking Committee. There was some executive  
18 privilege issues that requests to both Customs and to  
19 the Inspector General had raised, and the counsel to  
20 the Inspector General talked to me about those. I am  
21 somewhat familiar with the office of legal counsel  
22 guidance on those issues, so we talked about it. I

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1 may have put her in touch directly with the office of  
2 legal counsel.

3 MS. STERGIS: Mike, can we just note for  
4 the record, the new person who has joined us.

5 MR. O'CALLAGHAN: Yes, Michael Chertoff has  
6 joined us.

7 MR. CHERTOFF: I'm the special counsel.

8 THE WITNESS: Hi, Mike, we actually met  
9 before.

10 MR. O'CALLAGHAN: Actually, can we go  
11 off -- let's go off the record for a moment.

12 (Discussion off the record.)

13 THE WITNESS: Before we go into a new  
14 question, I wanted to elaborate on something we  
15 discussed earlier. This Anti-Deficiency Act work  
16 that I had done with the IG on an audit or  
17 investigation, I'm not sure how they would  
18 characterize it, of one of Treasury's bureaus. I was  
19 given and asked by the IG to comment on probably a  
20 minimum of two, maybe as many as three or four,  
21 drafts of their report.

22 MR. O'CALLAGHAN: Okay. Thank you.

## EXAMINATION

BY MR. CHERTOFF:

Q Mr. Schmalzbach, when did you first learn that there had been a request to have Treasury, the Treasury Inspector General's office participate in assisting the Office of Government Ethics in consulting an ethics review regarding the White House-Treasury contacts?

A I'm not sure. I now understand that the request actually came from the Office of Government Ethics. I don't know when exactly it was made. My recollection is it's reflected in a piece of correspondence, possibly from OGE to Secretary Bentsen in mid-March.

Q When did you first learn the Inspector General was going to participate in a review of Whitewater-related matters?

A I honestly don't remember when I first learned of that.

Q Putting aside for a moment when you first learned, what was it that you first learned concerning the Inspector General's participation in

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this matter?

A That OGE had asked the IG to participate in it.

Q And how did you learn that?

A I don't really remember, but I now have seen, and I probably saw back in March of '94, a letter from OGE to Secretary Bentsen informing him that they had asked the IG to participate. I think it was the same letter where they informed him that Independent Counsel Fiske had asked them not to proceed until Fiske was done.

Q Did you get an assignment in relation to the Inspector General's inquiry?

A I was asked by counsel to the Inspector General to provide sort of a legal opinion. It was actually a little bit unclear, what they wanted about Treasury's authority to work on RTC matters.

Q When was that?

A Sometime in July. I don't remember the exact date. I think there is actually a written request.

Q Before July of 1994, did you have any



1 official involvement in anything whatsoever to do  
2 with the Inspector General's examination of  
3 Whitewater matters?

4 A Yes.

5 Q When did you first have --

6 A In June, as we contemplated Secretary  
7 Bentsen's need to testify at Congressional hearings,  
8 we were trying to figure out how he would get the  
9 information that he would need to testify.

10 Q Who is we?

11 A Treasury, Ed Knight, me, Bob McNamara,  
12 Steve McHale.

13 Q How did you first get called in to become  
14 one of the people who would be involved in helping  
15 the Secretary prepare for his testimony?

16 A Actually it goes back to March. I was in  
17 the wrong place at the wrong time.

18 Q How did you get called into that?

19 A I was asked -- on March 7th, sometime  
20 around 5:00 in the afternoon, I went up to the  
21 general counsel's office for a reason I no longer  
22 recall. And they were looking for people to draft

1 questions and answers for Secretary Bentsen to  
2 testify about Whitewater at appropriations hearings  
3 that were happening on the 8th and the 10th, and I  
4 think the 20th of March, and there was another one in  
5 April.

6 Q Now, when was the first time that you  
7 learned that there might be a need for Secretary  
8 Bentsen to testify concerning the issue of contacts  
9 between the Treasury Department and the White House  
10 regarding Whitewater?

11 A I don't recall.

12 Q When was the first time you became involved  
13 in, having any role or playing any role at all, in  
14 helping the Secretary prepare for the possibility of  
15 such testimony?

16 A I don't specifically remember, but it was  
17 probably late May or early -- maybe it was even  
18 earlier than that. Maybe it was earlier May.

19 Q Who brought you into it?

20 A Probably Ed Knight, but I don't  
21 specifically recall being asked to do it.

22 Q Well, how did you come to do it? How did

1 you come to be involved in the process of assisting  
2 or preparing to assist --

3 A I was one of the people.

4 Q You have to let me get the question out.

5 How did you come to be involved in  
6 assisting or preparing to assist the Secretary in  
7 testifying about Treasury-White House contacts?

8 A I was one of the people who assisted Ed in  
9 figuring out whether and when to grant White House  
10 counsel's request to review Treasury -- the documents  
11 that Treasury had produced to Independent Counsel  
12 Fiske.

13 Q And when was that?

14 A End of April.

15 Q And did Mr. Knight select you to assist him  
16 in that deliberative function? Who assigned you to  
17 this?

18 A I understood -- I don't know. I don't know  
19 where I heard about it. I mean --

20 Q Did Mr. Knight select to you do it?

21 A That's possible.

22 Q Did Ms. Hanson select you to do it?

1 A No.

2 Q Were you on a rotation and your turn came  
3 up, or did someone specifically say I want  
4 Mr. Schmalzbach to help Mr. Knight?

5 A You need to understand the way my day  
6 goes. I actually, a couple of years ago, kept track  
7 of my time 10 minutes by 10 minutes. And I  
8 discovered that my life, my professional life runs in  
9 five-minute increments, and that means that I can, on  
10 any given day, may be handling between 20 and 30  
11 questions. They come in, phone calls, I may be asked  
12 to go up to the general counsel's office, I may be  
13 asked to go see a client.

14 I simply do not remember how that happened.

15 Q Do you know who made the selection of you  
16 to participate in assisting Mr. Knight in dealing  
17 with the question of White House access to the  
18 transcripts?

19 A No.

20 Q At any event, there came a point in late  
21 April of 1994 that you began to work with Mr. Knight  
22 on the issue of these Treasury-White House contacts?

1 A On the issue of whether or not the White  
2 House could have access to the documents that we had  
3 produced to Independent Counsel Fiske.

4 Q And as a consequence of that initial work,  
5 when the question of Mr. Bentsen eventually  
6 testifying before Congress on this question came up,  
7 you continued to work on it with Mr. Knight?

8 A Right.

9 Q Were you also involved in assisting  
10 Mr. Knight in counseling the Secretary with respect  
11 to what use the Secretary would be making of the OGE  
12 report that he had requested in March?

13 A Yes.

14 Q And that was again part of this continuing  
15 involvement --

16 A Right.

17 Q -- stemming from April; correct?

18 A Right.

19 Q Now, do you keep a spiral notebook record  
20 of events that come up during your day?

21 A I make notes of things that I have to do or  
22 have done during the day, yeah.

1 Q And you've produced pages of that, some of  
2 which are partly redacted, to the Committee?

3 A Right.

4 Q I'm going to show you what's been marketed  
5 as Bates number 15995 to or rather through 998 for  
6 identification. And let me ask you just if those are  
7 pages from one of your notebooks written in your  
8 handwriting.

9 (Witness reviewed the document.)

10 A Yes, it's all my handwriting.

11 MS. STERGIS: May I have an opportunity to  
12 read the document?

13 MR. CHERTOFF: Sure.

14 (Pause.)

15 BY MR. CHERTOFF:

16 Q Did you make these notes on 5/10/94?

17 A That's what the document says; I assume I  
18 got the date right.

19 Q And your practice, with respect to notes in  
20 this notebook, was to make them on the date that you  
21 dated at the top of the page?

22 A Yeah, in most instances.

1 Q You didn't write a notebook in which you  
2 reconstructed after the fact your recollection of  
3 what had occurred on particular days?

4 A No, that's not my normal practice.

5 Q Your normal practice would be to make your  
6 notes here contemporaneously?

7 A Right.

8 Q Let me direct your attention first to the  
9 entry on 15995. To what does this refer?

10 A It refers to thinking about -- actually  
11 first thinking about how the Secretary would get  
12 information -- it was all a part of thinking about  
13 preparing for the hearings.

14 Q The Congressional hearings?

15 A Right.

16 Q And the question was how the Secretary  
17 would get information to prepare for that?

18 A Right.

19 Q Now, I want you to focus on your state of  
20 mind as of May 10th, on or about May 10th, 1994. At  
21 that point in time, you were aware that the Secretary  
22 had requested OGE furnish him with a report?

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1 A Yes.

2 Q And where did you learn that from?

3 A I was actually, on March 3rd, one of a  
4 group of people from whom advice about where the  
5 Secretary should get the facts was sought.

6 Q And what was the conclusion at the end of  
7 that meeting about where the Secretary should get  
8 that information from?

9 A I'm not sure that there was necessarily a  
10 meeting. The conclusion was that he should go to OGE  
11 because they knew the ethics rules.

12 Q And what was the purpose, as you understood  
13 it, of the, of what the --

14 A Mike, let me be careful. There was --  
15 there were a couple, three people in my office at  
16 which our advice was sought. I don't think we really  
17 reached -- we didn't really reach a conclusion. I  
18 don't know who made the decision to go to OGE.

19 Q Well, whose advice was sought -- first of  
20 all, who was in the group?

21 A Mine, Dennis Foreman's, maybe Rick Carro.

22 Q Who is Rick Carro?

1 A Associate general counsel for legislation,  
2 litigation and regulations.

3 Q Was there anybody else whose advice was  
4 sought on it?

5 A I don't know.

6 Q Now, the Dennis Foreman you referred to is  
7 the deputy general counsel of Treasury?

8 A Was, yes.

9 Q What were the various suggestions for how  
10 the Secretary might get the information he received?

11 A It's pretty wide-ranging. IG, OGE, outside  
12 counsel a la the Waco review group. I don't know  
13 what else was contemplated.

14 Q What was the Secretary looking for, was  
15 he --

16 A I didn't talk to the Secretary.

17 Q Who did you talk to, Mr. Knight?

18 A Mr. Foreman.

19 Q So Mr. Foreman --

20 A I'm sorry. Say your question again. Who  
21 did he talk to?

22 Q No, who did you talk to.

1 A To Mr. Foreman.

2 Q And who was he dealing with?

3 A That I don't know.

4 Q He didn't tell you?

5 A No.

6 Q What did Mr. Foreman tell you the Secretary  
7 was seeking to do? Was he seeking to have an  
8 independent investigation of what had occurred or was  
9 he seeking to have a way to prepare himself to  
10 testify?

11 A He was seeking advice as to what he should  
12 do.

13 Q Again, the question is what he should do  
14 with respect to management or discipline in the  
15 department, or with respect to preparing testimony?

16 A What he should do in order to find the  
17 facts. That's what I understood.

18 Q So as you understood what the Secretary was  
19 interested in doing in March was having a complete,  
20 unbiased, independent and thorough factfinding  
21 exercise?

22 MR. PORTNOY: I don't think that's his



1 testimony.

2 THE WITNESS: I'm in no position of saying  
3 what the Secretary wanted.

4 BY MR. CHERTOFF:

5 Q What's your understanding?

6 A The advice sought of me was what options  
7 were there to find the facts.

8 Q So you understood the question to be what  
9 would be the best way to find out what actually  
10 happened?

11 A No, what the options were. I don't think I  
12 was asked for a recommendation. I was asked what  
13 those options there were.

14 Q What options there were for ways to get the  
15 facts about what happened?

16 A Right.

17 Q And in making your -- what did you  
18 recommend?

19 A I did not make a recommendation.

20 Q Was one of the considerations that you  
21 discussed with Mr. Foreman or anybody else in  
22 responding to this request for options finding a

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1 factfinder who would be an independent, thorough  
2 factfinder?

3 A I don't recall.

4 Q What were the -- what was the --

5 A We were to spin out every option we could  
6 conceive of for finding facts.

7 Q And were there particular considerations  
8 that Mr. Foreman requested you be attentive to in  
9 spinning out those options?

10 A No, not that I recall.

11 Q Were you asked to make a recommendation?

12 A No.

13 Q Did there come a time afterward that you  
14 learned that the Secretary had made a decision about  
15 how he wanted the facts to be found?

16 A I certainly became aware that we had sent a  
17 letter to the Office of Government Ethics.

18 Q And what was your understanding of what  
19 was, of what the request was that was made to the  
20 Office of Government Ethics?

21 A For advice as to whether the Treasury-White  
22 House contacts had involved any Treasury officials in

1 violations of the standards of conduct.

2 Q And what was your understanding of the  
3 purpose for which that advice from OGE was being  
4 sought by the Secretary?

5 A I think the Secretary felt he had an  
6 obligation as the manager of the department to take  
7 whatever action, if any, was appropriate, and he  
8 needed expert advice as to whether rules had been  
9 violated in order to do that.

10 Q Now, did you also come to learn that the  
11 Office of Government Ethics had requested the  
12 assistance of the Treasury Inspector General in  
13 carrying out this responsibility?

14 A At some point I did, yes.

15 Q And what was your understanding of the role  
16 of the Inspector General as they would be acting at  
17 the request of OGE?

18 A To find facts.

19 Q Did you have an understanding about why the  
20 Inspector General's office had been selected for this  
21 function?

22 A OGE had did not view itself as having

1 factfinding capability and they needed factfinding  
2 capability. So as I understand it, they went to both  
3 Treasury's and RTC's IGs for that assistance.

4 Q Do you know why they went to the Inspector  
5 General's office for factfinding as opposed to, say,  
6 the general counsel's office for factfinding?

7 A No.

8 Q Now, getting back to your notes of May  
9 10th, 1994, this first entry on the first page, again  
10 you are considering what question?

11 A When the IG and OGE would finish the work  
12 that the Secretary had asked OGE had do.

13 Q Now, as of May, was it your understanding  
14 that the Secretary had asked OGE to hold its project  
15 in abeyance until Mr. Fiske gave the go-ahead?

16 A No.

17 Q What was your wanting?

18 A That Mr. Fiske had asked OGE to hold its  
19 work in abeyance.

20 Q And what was your understanding of the  
21 Secretary's position on that?

22 A I don't see why the Secretary would have

1 occasion to have -- I'm sure he was impatient. He  
2 wanted the work done, but I also know that he wasn't  
3 going to run crosswise with the independent counsel.

4 Q So your understanding is the Secretary  
5 acquiesced in their requesting --

6 A That's a fair characterization.

7 Q Was it your understanding that Mr. Fiske  
8 ordered the Office of Government Ethics not to go  
9 ahead with its inquiry?

10 A No, my understanding would be that he asked  
11 them not to and told them that he wanted to avoid  
12 interference with his investigation.

13 Q And was it your understanding that the  
14 Secretary was agreeable to deferring his request to  
15 the request of Mr. Fiske?

16 A Actually, it would be my understanding the  
17 Secretary didn't have any choice in the matter.

18 Q You think the Secretary could not have said  
19 to the Office of Government Ethics, most respectfully  
20 I disagree with Mr. Fiske and I want you to proceed  
21 with your work?

22 A I suppose he could have said that.

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1 Q Was it your understanding that he did say  
2 that?

3 A No.

4 Q Was it your understanding his position was  
5 in fact that he would wait until Mr. Fiske indicated  
6 that Mr. Fiske had no further objection?

7 A Yes.

8 Q Now, is this entry on page 15995 a notation  
9 of a conversation or a reflection of a conversation  
10 you had with someone, or a reflection of your own  
11 thinking through?

12 A I do not remember.

13 Q Directing your attention to the entry here,  
14 "if Fiske issues interim report with facts found, FK  
15 thinks this may affect IG timing." Who do the  
16 initials FK denote?

17 A I assume that's Francine Kerner.

18 Q And Francine Kerner was in what position as  
19 of this point in time?

20 A Counsel to the Inspector General.

21 Q And did she work in your particular  
22 section?

- 1 A No.
- 2 Q Administratively to whom did she report?
- 3 A To the deputy general counsel.
- 4 Q Mr. Foreman?
- 5 A Right.
- 6 Q Were you discussing with Ms. Kerner at this  
7 point in time, issues involving the Inspector General  
8 OGE report?
- 9 A It appears that I was.
- 10 Q What did Ms. Kerner think would -- how did  
11 Ms. Kerner indicate to you that she thought Fiske's  
12 issuance of an interim report would affect the IG's  
13 timing?
- 14 A What the note suggests -- I don't recall a  
15 conversation with Francine about this, but what the  
16 note suggests is that if Fiske issued findings of  
17 fact, somehow whether he did or not would affect, I  
18 guess, how quickly the IG would be able to conclude  
19 their job.
- 20 Q Why?
- 21 A I don't know.
- 22 Q It says then "maybe not smart to report

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- 1 completed fact findings before Congressional  
2 hearings." What does that mean?
- 3 A I think -- I don't honestly know -- but I  
4 think it is a reference to Francine's assessment.  
5 And I don't know why, but Francine's assessment was  
6 that Fiske might not want to report facts prior to a  
7 Congressional hearing because he might be concerned  
8 about, you know, facts coming out in a hearing that  
9 he hadn't reported on.
- 10 Q Why was that relevant to your consideration  
11 of your responsibilities regarding the IG OGE report?
- 12 A Well, I think what was relevant was whether  
13 Fiske would report facts. If he had reported facts,  
14 it would have facilitated the Secretary's job in  
15 testifying.
- 16 Q Was it your understanding at this point  
17 that the purpose of the IG OGE inquiry was to help  
18 the Secretary prepare to testify or to help the  
19 Secretary make a determination about whether there  
20 was wrongdoing within the department for purposes of  
21 taking whatever action might be called for?
- 22 A Primarily to help the Secretary in

1 fulfilling his management responsibilities, but both.

2 Q Next page, 15996, of it says "call OGE,  
3 long lead heads-up. Resource issues." What does  
4 that mean?

5 A We were concerned about whether once Fiske  
6 lifted his request to OGE not to proceed and request  
7 to the IG not to proceed, would OGE have enough time,  
8 have enough resources to complete what the Secretary  
9 had asked them to do in time for the -- before the  
10 hearing.

11 Q It goes on to say "research project, what  
12 is precedent for Cabinet Secretary reaction to IG  
13 reports on or similar facts without IG reports"?

14 A Yeah, there was a concern, and this was  
15 actually voiced to me by Ed Knight, about what was an  
16 appropriate reaction to different kinds of facts that  
17 looked like what the newspapers at that point had  
18 been reporting at the time had been happening in the  
19 Treasury Department. I did not at the time believe  
20 that there was going to be any precedent.

21 I did not recall a similar kind of issue  
22 concerning conduct of government officials and also

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1 thought that, even if there had been, it was unlikely  
2 that there would be any disclosure other than  
3 possibly a newspaper article that someone had  
4 resigned and you wouldn't know how that had happened  
5 and that turned out to be accurate.

6 Q Did you discuss these issues as they are  
7 set forth on page 15995 and 15996 with Mr. Foreman?

8 A Certainly, I discussed -- well, probably.  
9 Probably on the issue on 15995. I'm not sure whether  
10 I ever talked to Dennis about this, the issue about  
11 what had Cabinet Secretaries done with respect to  
12 their officials before. I may have, I just don't  
13 remember doing it.

14 Q The issue regarding the timing of the IG  
15 OGE Whitewater work you discussed with Mr. Foreman?

16 A I suspect I did. I don't remember specific  
17 conversations.

18 Q As of this point in time, in May of 1994,  
19 had Mr. Foreman recused himself or distanced himself  
20 with any discussions with you concerning the this  
21 internal investigation by the Inspector General's  
22 office?



1 A Mr. Foreman had followed a practice of  
2 recusing himself from any discussion of the substance  
3 of the RTC's work on Madison Guaranty.

4 Q Why?

5 A You'd have to ask him that.

6 Q Did he -- I asked you a somewhat different  
7 question. Did he recuse himself, at least at this  
8 point in time, from any discussion with you  
9 concerning the Inspector General's inquiry into White  
10 House-Treasury contacts?

11 A I don't think so. He was sort of  
12 distancing himself from anything related to all of  
13 this, but he had made a specific point of asking not  
14 even to be informed about anything regarding the  
15 substance of the RTC's work on Madison Guaranty.

16 Q Did he ever give you a reason for that?

17 A You'd have to ask him that.

18 Q I asked did he ever give you a reason?

19 A Did he give me a reason?

20 Q Yes.

21 A He probably tried to but I didn't  
22 understand it.

1 Q Did you ever wonder whether Mr. Foreman --  
2 well, let me withdraw the question.

3 At any point after May of 1994 up through  
4 August, mid-August 1994, did Mr. Foreman ever say to  
5 you that he was recusing himself from any discussions  
6 with you concerning the IG OGE investigation of  
7 contacts between Treasury and the White House?

8 A I don't believe he ever made a direct  
9 statement like that.

10 Q Did you ever suggest it to him?

11 A Did I suggest it to him, no.

12 Q Did there come a point in time when you  
13 became aware that Mr. Foreman's own advice to  
14 Ms. Hanson was one of the subjects of the inquiry?

15 A Yes.

16 Q Did there come a point when you became  
17 aware that there was a difference in recollection  
18 between -- or in articulation of what had happened in  
19 certain conversations between Ms. Hanson and  
20 Mr. Foreman?

21 A No.

22 Q Did you ever become aware that Ms. Hanson

1 had given some testimony about her conversations with  
2 Mr. Foreman in early 1994 about going to the White  
3 House and that Mr. Foreman had given some testimony  
4 about that?

5 A Yeah.

6 Q Did the fact that that testimony became  
7 part of this IG investigation cause you to suggest to  
8 Mr. Foreman that perhaps he should take himself out  
9 of any discussions concerning the investigation?

10 A No.

11 Q Page 15997, can you read this to me,  
12 please?

13 A "Hanson from Bachus."

14 Q Who is Bachus?

15 A Spencer Bachus.

16 Q And who is Spencer Bachus?

17 A Well, he was certainly a Congressman from I  
18 think Alabama -- is a Congressman from Alabama.  
19 "Levy," arrow. Looks like -- I'm sorry. "Response  
20 to letters of 4/12 to Hanson. A and 5. Note request  
21 for various documents regarding Treasury-White House  
22 meetings. As publicly stated Treasury and

1 individuals cooperating fully with independent  
2 counsel investigation into these matters. Secretary  
3 has asked OGE to look into/advise. OGE asked  
4 Treasury IG for factfinding help.

5 "Independent counsel asked Treasury" --  
6 well, actually independent counsel asked someone up  
7 above, either Treasury or OGE, "to proceed until  
8 Fiske notifies. Fiske hasn't yet notified. Concern  
9 regarding parallel inquiries therefore were not in  
10 position to release."

11 Q What does that mean, "concern re: parallel  
12 inquiries"?

13 A I could speculate. I don't know.

14 Q These are your notes?

15 A Right.

16 Q What did you mean when you wrote "concern  
17 re: parallel inquiries"?

18 A I assume that I meant that Fiske was  
19 concerned about the IG conducting a factfinding  
20 inquiry while Fiske was conducting a factfinding  
21 inquiry.

22 Q Did you have an understanding about why

1 Mr. Fiske might have had that concern?

2 A Vague sort of understanding about  
3 normally -- well, frequently criminal prosecutors  
4 have concerns about administrative inquiries  
5 proceeding at the same time that the criminal  
6 prosecutors are talking to the same witnesses.

7 Q Do you understand the reason for that  
8 concern?

9 A No. What I understand, and have understood  
10 since I started working for the government, is if you  
11 are working on an administrative matter that is in  
12 some way related to a criminal matter, you talk to  
13 the prosecutor so you make sure they have the  
14 opportunity to make a judgment about whether what you  
15 are doing will screw them up.

16 Q Do you have an understanding of what the  
17 concern is that animates that policy?

18 A It may be -- well, I listened to Joe  
19 Gangloff at the OGE ethics conference in September  
20 say it was overblown and that prosecutors frequently  
21 are spread too broad a blanket against an  
22 administrative matters proceeding. But I'm not -- I

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1 have no criminal background whatsoever, and I'm not a  
2 good person to be a spokesperson for what Fiske's  
3 concerns were.

4 Q Well, did you have an understanding at this  
5 time that there was a concern that a parallel  
6 investigation by Treasury might somehow have the  
7 result of affecting witnesses' recollections or --

8 A No, as to that.

9 Q -- inadvertently conveying information to  
10 witnesses who might impede the ability of the  
11 prosecutor to get the facts?

12 A I suspect that I vaguely understood that  
13 there might be concern about them getting the  
14 information through a parallel inquiry.

15 Q Let's turn to 15998. What is that?

16 A Access to IG interview reports. Also we  
17 interviewed Treasury witnesses. It's just witness  
18 preparation. No sensitivity. May be Congressional  
19 staff interviews at same time.

20 It really almost sounds like musings about  
21 how would we get information so that we could enable  
22 the Secretary to fulfill his management

1 responsibilities and testify about having done so.

2 Q Now, at this point you considered your  
3 responsibility to help prepare the Secretary to  
4 testify; right?

5 A I considered my responsibility to assist  
6 the Secretary in fulfilling his management  
7 obligations and to testify about having done so.

8 Q Did you believe you were going to become  
9 involved in the investigation to be conducted by the  
10 Inspector General?

11 A No. What do you mean, "involved in"?

12 Q Did you believe you were going to have a  
13 role to play of any kind as of May of 1994 in the  
14 Inspector General's investigation of the facts?

15 A No.

16 Q Had anyone ever assigned you that  
17 responsibility?

18 A No.

19 Q Did you understand that the Inspector  
20 General of Treasury and the Inspector General of the  
21 RTC were going to conduct their own review with their  
22 own personnel?

1 A Actually, at this stage of the game, I'm  
2 not sure I knew that the Inspector General of the RTC  
3 was going to be involved.

4 Q And let's put the Inspector General of RTC  
5 out and let's just talk about Treasury. Was it your  
6 understanding that the Inspector General of Treasury  
7 was going to conduct his own investigation using his  
8 own personnel in coming up with his own independent  
9 factfinding?

10 A Yes.

11 Q And you did not anticipate, as of May 1994,  
12 being part of the investigative team --

13 A No.

14 Q -- in that process?

15 A No.

16 Q And when you said "access to IG interview  
17 reports," were you considering at this point -- from  
18 the standpoint of preparing the Secretary -- that it  
19 might be useful to find out what the Inspector  
20 General had factually developed so the Secretary  
21 could testify?

22 A Sure.

1 Q And when you say also --

2 A And also so that he could fulfill his  
3 management responsibilities.

4 Q Well, was it your understanding that the  
5 Secretary was going to be getting the raw data from  
6 the Inspector General and analyzing it himself or  
7 that the --

8 A At this stage of the game, we didn't know  
9 what the Secretary was going to be getting or when he  
10 would be getting it. We were trying to figure out  
11 what he should get.

12 Q Well, you understood as of May that the  
13 Secretary had made a request for OGE to provide him  
14 with some advice?

15 A Right.

16 Q You also understood that OGE had  
17 requested -- had asked the Inspector General to  
18 assist OGE by gathering facts?

19 A Right.

20 Q You understood that the Inspector General  
21 was going to gather facts and submit them to OGE and  
22 that OGE would then prepare its response to the

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1 Secretary and furnish it to the Secretary?

2 A I actually, I don't know when I understood  
3 it, but I certainly learned that the IG was going to  
4 submit his findings of fact -- he doesn't really make  
5 findings of facts, he sort of reports what he's  
6 heard -- but that he was going to submit a  
7 description of what he had heard to both OGE and to  
8 Treasury.

9 Q At the same time?

10 A Yeah.

11 Q When did you learn that?

12 A There is a note that I have written, I no  
13 longer recall where it is that indicates that that  
14 was something that Treasury's IG wanted to do.

15 Q That Treasury's IG himself came up with  
16 this idea?

17 A Right.

18 Q So was it your understanding that the  
19 original letter that went from the Secretary to OGE  
20 requested OGE to be the point of contact with the  
21 Secretary's office?

22 A I'm not sure that it got into that kind of



1 detail. It asked them to do work.

2 Q And in other words, the request came from  
3 the Secretary to OGE; right?

4 A That is correct.

5 Q Were you aware, at least in March of 1994,  
6 of any direction from the Secretary to the IG of  
7 Treasury to do some work directly for the Secretary?

8 A No, I was not.

9 Q And your understanding was that the IG from  
10 Treasury got involved because it was requested that  
11 he do so by the OGE?

12 A Right.

13 Q Did you ever become aware at any time that  
14 the Secretary of the Treasury had directed the RTC's  
15 IG to turn the work over to the Secretary of the  
16 Treasury?

17 A No.

18 Q To your knowledge, does the Secretary of  
19 the Treasury have the authority to direct the RTC  
20 Inspector General what to do with his or her work  
21 product?

22 A No.

1 Q Now, the next line on 15998 says "also we  
2 interviewed Treasury witnesses."

3 A That was a possibility that we were  
4 considering.

5 Q And then you say "it's just witness  
6 preparation"?

7 A Right.

8 Q What did you mean by "witness preparation"?

9 A Well, first of all, I don't remember the  
10 circumstances under which I wrote this note. I  
11 suggest -- I suspect what it meant was that we did  
12 not see it as particularly sensitive from any  
13 perspective for the people who were trying to prepare  
14 the Secretary to interview Treasury witnesses.

15 Q Well, what did you mean when you say "it's  
16 just witness preparation"?

17 A I just answered that question.

18 Q You are saying that when you say "it's just  
19 witness preparation," you mean preparation of the  
20 Secretary as a witness?

21 A Actually, I don't know whether that was a  
22 reference to preparing the Secretary or a reference

1 to preparing other Treasury witnesses to testify at  
2 Congressional hearings.

3 Q So you envisioned that you would have a  
4 responsibility to prepare other Treasury witnesses?

5 A We hoped that we would.

6 Q And that would have included the Treasury  
7 deputy Secretary?

8 A Altman. It would have included all the  
9 Treasury witnesses.

10 Q In your mind, then, how did you see the  
11 relationship between seeing the Inspector General's  
12 transcripts and interviews and the process of  
13 assisting in witness preparation for the Treasury  
14 witnesses who would be testifying before Congress?  
15 Did you see this as part of the same process?

16 A Yeah, probably at this stage of the game --  
17 or, you know, two things to do leading up to the same  
18 review of the department's work by the House and the  
19 Senate.

20 Q So you envisioned that your  
21 responsibilities, at least as of May of 1994, would  
22 include both advising the Secretary in terms of his

1 dealing with the report from the Inspectors General  
2 and OGE about the facts, as well as assisting in  
3 preparing the witnesses who were the subject of that  
4 investigation for their testimony before Congress?

5 A We recognized both as possibilities.

6 Q And at this point in time in May did  
7 anybody in the general counsel's office suggest that  
8 there might be a problem in blending those  
9 responsibilities?

10 A We considered the fact that the department  
11 might be subjected to criticism.

12 Q And who considered that?

13 A I did.

14 Q Did you talk about it with anybody else?

15 A Sure. I talked about it with the team.

16 Q And who was the team?

17 A Ed Knight, Bob McNamara, Steve McHale and  
18 myself.

19 Q And what conclusion did you reach?

20 A We didn't reach a conclusion at this time.

21 Q When did you first discuss the possibility  
22 that the department might be subject to criticism for

1 blending the responsibility for the --  
2 A I don't think that we ever articulated it  
3 to ourselves in terms of a possibility of the  
4 department being subject to criticism for blending  
5 those two tasks. We anticipated the possibility that  
6 we would be criticized -- and we felt that the  
7 criticism was improper -- for assisting Treasury  
8 witnesses in testifying about their official  
9 responsibilities and what they had done in fulfilling  
10 them.

11 Q Did you ever consider whether there would  
12 be a problem in your assisting witnesses in --

13 MS. STERGIS: Excuse me. I'm sorry.

14 BY MR. CHERTOFF:

15 Q Did you ever consider whether there would  
16 be a problem in assisting Treasury witnesses in  
17 testifying if you became aware of -- if you were  
18 aware of the testimony of other witnesses from  
19 Treasury or other agencies who had testified about  
20 the same subject?

21 A Sure.

22 Q And what was the discussion about that

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1 issue?

2 A Oh I don't remember the specific --

3 Q Do you see a problem in doing that?

4 A I felt that it was our responsibility to  
5 prepare our witnesses to talk about their performance  
6 of their official responsibilities in Congressional  
7 testimony. I fully anticipated that people might  
8 criticize us for doing it, but it was nonetheless our  
9 responsibility to do it.

10 Q But in carrying out that responsibility,  
11 then, it was your understanding that you would be  
12 bringing to bear with each witness --

13 A We never got that far. We never got that  
14 far. At the end of the day, except for people like  
15 Joan Logue-Kinder and Ben Nye and Frank Newman, we  
16 really did not provide assistance to Treasury  
17 witnesses. And that was a decision that the  
18 witnesses themselves made.

19 Q But until the witnesses made those  
20 decisions, it was your intention that you would in  
21 fact be involved in witness preparation --

22 A Yes.

1 Q -- for the hearings?

2 A Yes.

3 Q And when you anticipated being involved in  
4 witness -- witness preparation --

5 A Well --

6 Q Let me finish.

7 A I don't want to overstate that. Because we  
8 were considering the possibility of doing so.

9 Q And when you considered that possibility,  
10 that possibility embraced representing all the  
11 witnesses?

12 A Yes.

13 MS. STERGIS: Objection to the term  
14 "representation."

15 THE WITNESS: Yeah, we intended to  
16 represent the department's interest. There had been  
17 no divergence between the department's interest and  
18 that of the witness.

19 MS. STERGIS: Excuse me. We've been going  
20 for two hours. Can we take a brief five-minute  
21 break? We haven't had a break until now.

22 (Recess.)

1 BY MR. CHERTOFF:

2 Q Mr. Schmalzbach, directing your attention  
3 back to May of 1994. You talked about the fact that  
4 at that point in time you were contemplating the  
5 possibility of preparing Treasury witnesses for the  
6 upcoming hearings; correct? You have to answer  
7 audibly.

8 A Yes. Sorry.

9 Q And at that time I take it you anticipated  
10 the possibility of preparing multiple witnesses for  
11 the hearings; correct?

12 A Yes.

13 Q And in so doing you understood that you  
14 would then be bringing to bear in the preparation  
15 your knowledge of what all the other witnesses had  
16 said or were going to say?

17 A I don't know that we got that far in our  
18 thinking.

19 Q You didn't make any -- let me withdraw the  
20 question.

21 As of May of 1994 there was no discussion  
22 of taking any steps to see to it that if general

1 counsel's personnel were going to be preparing  
2 witnesses there should be a manner devised to make  
3 sure that the information conveyed by one witness  
4 would not be conveyed to a second witness?

5 A I don't recall that our discussion got that  
6 far into that level of detail.

7 Q Did you have any contact with the White  
8 House on the issue of your responsibilities in  
9 connection with this, the White House-Treasury  
10 contact hearings, before June of 1994?

11 A I'm sorry. Would you do that question  
12 again for me?

13 Q Regarding your responsibilities in  
14 connection with possible hearings or the  
15 investigation of these White House-Treasury contacts,  
16 did you have any contact with anybody at the White  
17 House yourself before June 1, 1994?

18 A I don't know.

19 Q In other words, you're not certain?

20 A Right. As to the timing.

21 Q Did there come a point in time when you  
22 dealt with someone in the White House concerning the

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1 subject of White House-Treasury contacts?

2 A Did you --

3 MR. PORTNOY: You meant the IG's  
4 investigation rather than this Congressional  
5 investigation.

6 MR. CHERTOFF: I meant the IG's  
7 investigation, that's correct.

8 THE WITNESS: I don't believe I ever really  
9 dealt with the White House counsel regarding the IG's  
10 investigation. I dealt with White House counsel  
11 regarding dealings with the House and Senate and  
12 regarding their access to our documents although I  
13 didn't have direct conversations with White House  
14 counsel regarding their access to our documents.

15 BY MR. CHERTOFF:

16 Q Who did you deal with in the White House  
17 concerning the upcoming hearings?

18 A Primarily Jean Sherbourne.

19 Q Do you remember the first time you dealt  
20 with Jane Sherbourne on the subject of the upcoming  
21 hearings?

22 A No.



1 Q Let me still keep your attention focused in  
2 May 1994.

3 A Okay.

4 Q You recall having a meeting during that  
5 month with Mr. Foreman and Mr. Cesca concerning  
6 making preparations for the Office of Inspector  
7 General inquiry?

8 A I recall having a meeting with Dennis  
9 Foreman and Bob Cesca. I don't remember exactly when  
10 it was.

11 Q Do you remember the substance of the  
12 meeting?

13 A Not in any detail.

14 Q Did the meeting include discussion of how  
15 the Inspector General's office would conduct its  
16 inquiry with respect to the White House witnesses?

17 A It may have. I don't recall.

18 Q Do you know if Francine Kerner was at the  
19 meeting?

20 A No.

21 Q Let me show you --

22 A No, I don't know whether she was there or

1 not.

2 Q Let me show you what's been marked as  
3 Exhibit 330 to 331 and ask you whether this -- those  
4 are Bates numbers -- ask you whether this refreshes  
5 your recollection about a meeting in May of 1994  
6 between yourself, Mr. Cesca, Ms. Kerner and  
7 Mr. Foreman.

8 (Witness reviewed the document.)

9 A Not substantially.

10 Q It does not refresh your recollection?

11 A No. I mean, in a vague sense. None of  
12 these things strike me as improper. I sort of have  
13 the sense that we went over how the factfinding might  
14 be done. I do not remember discussion of these  
15 options.

16 Q Do you remember why Mr. Foreman wanted to  
17 talk with Jean Hanson's private attorneys?

18 A No, I do not.

19 Q As of the time of this meeting, were you  
20 aware that Mr. Foreman's interactions with Ms. Hanson  
21 in early 1994 were, in fact, part of one of the  
22 issues being investigated?

1 A Yes.

2 Q Did it seem to you improper to have  
3 Mr. Foreman, then, be involved in actually discussing  
4 how to shape the inquiry which would examine his own  
5 conduct?

6 A I don't believe that Mr. Foreman was  
7 involved in discussing how to shape the inquiry that  
8 would examine his own conduct.

9 Q Was he involved in discussing the manner in  
10 which the inquiry would be conducted?

11 A I think he was trying to find out how it  
12 would be conducted.

13 Q And did you have any understanding that  
14 there were certain issues about how it would be  
15 conducted that he would be restricted from knowing  
16 about?

17 A No.

18 Q Why was he involved in this discussion?

19 A You'd have to ask him.

20 Q Did you know why he was involved in the  
21 discussion?

22 A No. I mean it's the kind of thing the

1 deputy general counsel would normally be involved in.

2 Q Even if the deputy general counsel's  
3 conduct was being investigated?

4 A I don't know that the deputy general  
5 counsel's conduct was being investigated.

6 Q Even if his past actions were one of the  
7 episodes that was the subject of the investigation?

8 A I guess I'm having trouble with anything  
9 that suggests that Dennis was -- Dennis's conduct  
10 was -- I mean he was a fact witness.

11 Q And, in fact, he gave testimony about  
12 certain events that was somewhat different from the  
13 testimony that Ms. Hanson ultimately gave about those  
14 events; correct?

15 A I don't know that.

16 Q Well, at the time you had the meeting in  
17 May of 1994, did you know whether there might be an  
18 issue or difference of recollection between  
19 Mr. Foreman as to a material event and someone else  
20 as to a material event?

21 A I don't think that I was aware that there  
22 would be a difference recollection between Foreman

1 and Jean or anyone else.

2 Q You couldn't know one way or the other;  
3 right, as of May of 1994?

4 A I'm not sure whether I could have known or  
5 not. I don't recall knowing.

6 Q Did anybody, to your knowledge, as of May  
7 of 1994 make a determination that Mr. Foreman's  
8 testimony would not be in conflict with anybody  
9 else's and therefore it wasn't going to be a material  
10 issue in the investigation?

11 A I don't know.

12 Q Let me move to 15794. Do you recognize the  
13 handwriting on this exhibit?

14 A Yes.

15 Q Is that your handwriting?

16 A Yes.

17 Q Now --

18 MS. STERGIS: Excuse me a moment.

19 MR. CHERTOFF: Yes.

20 (Pause.)

21 BY MR. CHERTOFF:

22 Q Now, this writing is in a date book?

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1 A Uh-huh.

2 Q Was it your practice sometimes to keep  
3 notes in a date book?

4 A This does not reflect any normal practice  
5 of mine.

6 Q What is the reason you entered these notes  
7 in this date book.

8 (Witness conferred with counsel.)

9 MS. STERGIS: Can we go off the record a  
10 moment?

11 MR. CHERTOFF: Sure.

12 (Discussion off the record.)

13 BY MR. CHERTOFF:

14 Q Did you prepare these notes at the request  
15 of someone in connection with another investigation?

16 A I did not prepare these notes at anyone's  
17 request.

18 Q When did you prepare the entry on June 8th?

19 A I probably prepared this in May of 1995.

20 Q And why did you enter it on a date book  
21 that has the date June 8th, 1994?

22 A Because I made a mistake.

1 Q In other words, it wasn't an attempt to  
2 indicate that what's in these notes occurred on this  
3 particular date?

4 A It was an attempt to create -- not to  
5 create. It was an attempt to organize a chronology  
6 in my own head and I screwed up when I wrote that  
7 down. It's the wrong date.

8 Q Do you remember the date to which this  
9 particular entry relates?

10 A I believe it's July 8th.

11 Q Putting aside this particular page, with  
12 respect to --

13 A Why don't we look at my note of July 8th.  
14 All this is an attempt to organize in one place.

15 Q Did you make an effort in May of 1995 to  
16 organize your notes in an empty date book in which  
17 you used the dates in the book to correspond to  
18 events as you recalled them having happened on that  
19 day?

20 A That was my effort.

21 Q And in this case?

22 A As I say, I failed in this case.

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1 Q In this case you are saying that what you  
2 put down as June 8th really occurred on July 8th?

3 A It is a reflection of a note that is dated  
4 July 8th.

5 Q We'll get to it in due course then. Let me  
6 show you what's been marked as it says for  
7 identification, it says 169, and then there are two  
8 numerals that are obscured on the Bates number. And  
9 to further identify this exhibit -- why don't we mark  
10 it as an exhibit then.

11 MR. PORTNOY: I thought we weren't going to  
12 attach exhibits to the transcripts? .

13 MR. CHERTOFF: I'm just going to mark it  
14 for identification. Why don't we mark it for  
15 identification as an Exhibit KS-1.

16 (Exhibit KS-1 identified.)

17 BY MR. CHERTOFF:

18 Q Putting that before you, is this your  
19 handwriting?

20 A Yes.

21 Q And again, is this a note you prepared --

22 A Let me read it first, please.

1 Q All right.

2 (Witness reviewed the document.)

3 A Yes.

4 Q Is this a note you prepared in May of 1995?

5 A Sometime around May.

6 Q And you entered it in an empty book for  
7 June of 1994 because you believed that the date in  
8 this book, June 19th, 1994, corresponded to the date  
9 when the event related in the handwriting occurred?

10 A Yeah. We'd be much better off looking at  
11 the actual note because I'm not sure whether this is  
12 accurate or not either.

13 Q Why did you write this?

14 A Because I was trying to refresh my  
15 recollection.

16 Q Can you read this?

17 A Yeah. "KRS notes show Sherbourne hearing  
18 from Francine Kerner that OGE may not be ready. Jane  
19 Sherbourne asks whether Treasury will do anything."

20 Q Do you remember what event this relates to?

21 A Vaguely. Jane called me and told me that  
22 there was -- I guess that OGE was commencing to make

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1 noise about not being able to complete the advice  
2 they had been asked for by the Secretary prior to his  
3 hearing.

4 Q Did Ms. Sherbourne indicate to you why it  
5 was that OGE was communicating with her concerning  
6 what the Secretary of the Treasury had requested?

7 A I don't think that -- this note does not  
8 suggest to me that Jane heard this directly from OGE.

9 Q Did she tell you who she heard it from?

10 A It appears that she heard it from Francine.

11 Q Did you understand why Francine was  
12 communicating -- let me withdraw the question.

13 Why was Francine communicating about the  
14 question of OGE's ability to satisfy the Secretary's  
15 request with Ms. Sherbourne?

16 A I don't know.

17 Q Did Ms. Kerner ever tell you why she had  
18 that communication with Ms. Sherbourne?

19 A I don't know that she did.

20 Q Why did Ms. Sherbourne say she was calling  
21 you about it?

22 A Beg pardon.



1 Q Why did Ms. Sherbourne say she was calling  
2 you about it?

3 A I don't know why she -- I don't know that  
4 she did say why. It was obviously something we were  
5 interested in.

6 Q Now, the note indicates "JSS asks whether  
7 Treasury will do anything"?

8 A Right.

9 Q Did you recall on June 19th that  
10 Ms. Sherbourne asked whether Treasury would do  
11 something to speed OGE up in completing its report?

12 A I don't recall that. That's what my notes  
13 indicate she said to me.

14 Q You don't have a recollection of that?

15 A No, not really.

16 Q Do you have a recollection of it in May of  
17 1995 when you wrote this note?

18 A No.

19 Q What was the basis on which you wrote the  
20 note?

21 A My notes.

22 Q So this is your --

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1 A I'm sorry. What was the basis on which I  
2 wrote this note?

3 Q Yes.

4 A A note --

5 MS. STERGIS: Counsel, for the record, I  
6 believe the underlying note is also part of the  
7 Treasury production.

8 BY MR. CHERTOFF:

9 Q I'm trying to understand that you wrote  
10 this note based solely upon your reading of an  
11 earlier set of notes?

12 A Right.

13 Q You have no independent recollection of  
14 this?

15 A Right.

16 Q As you sit here now, can you tell us if you  
17 know -- if you've learned at any point in time why  
18 Ms. Kerner was communicating with Ms. Sherbourne in  
19 mid-June concerning whether OGE would satisfy the  
20 Secretary's wishes, in terms of the timing of  
21 completion of its report?

22 A No.

1 Q Did you ever ask Ms. Kerner to keep the  
2 White House apprised of how OGE was satisfying the  
3 Secretary's mandate?

4 A No.

5 Q Do you remember taking any action as a  
6 consequence of Ms. Sherbourne's question about  
7 whether Treasury would do anything?

8 A No.

9 Q Do you remember what you told  
10 Ms. Sherbourne?

11 A No.

12 Q As of June 1994, what was Ms. Kerner's role  
13 in connection with the Inspector General's  
14 investigation --

15 A I --

16 Q -- as of June 19th?

17 A As of June 19th, I have no idea. She was  
18 counsel to the Inspector General. I assume if the  
19 Inspector General needed legal advice in conducting  
20 that investigation he would go to Francine Kerner for  
21 that advice, or if the investigators needed advice,  
22 they would go to her for that advice.

1 Q Had you had discussions with Ms. Kerner  
2 before June 19th, 1994 concerning the Inspector  
3 General's investigation of how it would proceed other  
4 than the meeting we've previously put before you?

5 A Prior to what?

6 Q June 19th, 1994.

7 A I don't recall any specific discussions,  
8 but I assume there were some.

9 Q I'm going to show you what's been marked  
10 for identification as Bates number 15999. That's  
11 your handwriting; correct?

12 A Right.

13 Q And that's from your spiral notebook that  
14 you testified about earlier?

15 A Right.

16 Q And it reflects contemporaneous notes  
17 entered on June 20th, 1994?

18 A In all likelihood.

19 (Witness reviewed the document.)

20 Okay.

21 Q Now, working through this, it says  
22 "cooperation with Fiske. OGE IG." What else?

1 A It's cooperation with Fiske, cooperation  
2 with OGE, IG. Those are ditto marks.  
3 Q What does that reflect?  
4 A I don't know.  
5 Q The reference to the Senate Resolution,  
6 what does that refer to?  
7 A Presumably Senate Resolution 229.  
8 Q This passage in your notes, does this  
9 reflect a telephone conversation you had with  
10 somebody?  
11 A I don't know.  
12 Q There's a blacked-out portion at the top --  
13 A Right.  
14 Q -- over 6/20/94. Was it your practice to  
15 list at the top of your notebook above the date the  
16 identity of an individual if, in fact, the notes on  
17 that page reflected a conversation with that  
18 individual?  
19 A Sometimes.  
20 MR. CHERTOFF: Then I'm going to ask  
21 counsel for Treasury why that was redacted.  
22 MR. BUCKLES: I'm not familiar with exactly

1 what was there, why it was redacted, but I'll  
2 certainly find out for you.  
3 MR. CHERTOFF: If it's even possible that  
4 it reflects that this subject matter was discussed  
5 with someone, we want to know who it was discussed  
6 with.  
7 MR. BUCKLES: Absolutely, yes. What is the  
8 number on that again?  
9 MR. CHERTOFF: It's 15999.  
10 MR. BUCKLES: Okay.  
11 BY MR. CHERTOFF:  
12 Q Now, moving down further, it says  
13 "interview of Treasury witnesses." And then it says  
14 "IG plans Kalkine" -- K-a-l-k-i-n-e -- "equals use  
15 immunity." What does that refer to?  
16 A Presumably it refers to how the IG, what  
17 kind of -- it's like a Miranda analog the IG was  
18 going to give witnesses, and I unfortunately don't  
19 know this area of the law as well as I should. It  
20 may well be that what that means is that the witness  
21 can't be prosecuted for what they tell the IG. I  
22 just don't know that area of the law well enough.

1 Q Why was this in your notes?

2 A I don't know.

3 Q I mean, if it's an area -- let me withdraw  
4 the question.

5 Your testimony is that the area of use  
6 immunity or preinterview warnings by the Inspector  
7 General personnel is not an area of your expertise;  
8 correct?

9 A Right.

10 Q Is it fair to say, therefore, that there  
11 would be no reason for you in terms of your own  
12 planning or thinking about your own responsibilities  
13 to be paying attention to those kinds of issues?

14 A No.

15 Q Well, does this reflect your own  
16 spontaneous thoughts about the issue of whether the  
17 agents should be giving use immunity or warnings to  
18 the witnesses?

19 A I don't know.

20 Q Does it reflect a conversation with  
21 somebody else concerning this issue?

22 A I don't know.

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1 Q You understand what the rules are that  
2 govern Kalkines warnings?

3 A No.

4 Q Do you understand what the rules are that  
5 govern the grant of use immunity?

6 A No. I mean there are such rules; I don't  
7 know their details.

8 Q Do you remember ever doing research into  
9 those questions?

10 A I've had my staff do research on them.

11 Q Can you explain why these entries are in  
12 your notes?

13 A No.

14 Q The next entry says "declining to  
15 interview" --

16 A By the way, I have not -- I have not  
17 seen -- this is from a notebook that was taken away  
18 from me quite some time ago so I don't know what the  
19 original looks like.

20 Q Have you seen these notes this year?

21 MR. PORTNOY: Do you mean the original or  
22 the copy?

1 MR. CHERTOFF: Any copy or any version.  
2 THE WITNESS: I've seen this.  
3 BY MR. CHERTOFF:  
4 Q This page?  
5 A This page with the redactions.  
6 Q When?  
7 A Yesterday. Last Sunday.  
8 Q How did you come to see them last Sunday?  
9 A In preparing for this deposition.  
10 Q So you have had access to these notes very  
11 recently?  
12 A To this redacted version, not to the  
13 original.  
14 Q Did you ask anybody to show you the  
15 original so you could determine --  
16 A No, I did not.  
17 Q Whose initials were up there?  
18 A No, I did not.  
19 MS. STERGIS: Objection. That assumes  
20 facts not in evidence. We don't know that those are  
21 initials that have been redacted.  
22 BY MR. CHERTOFF:

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1 Q I'll withdraw the questions.  
2 Did you ask to see the unredacted copies so  
3 you could see what notation was being blacked out  
4 there?  
5 A No.  
6 Q Moving further down the document,  
7 "declining to interview can be used to fire,  
8 et cetera, transcripts of IG interviews." To what  
9 does that refer?  
10 A Presumably it refers to when an agency is  
11 conducting a lawful administrative inquiry into the  
12 conduct of its officials and the official declines to  
13 answer questions they can be fired for not answering  
14 the questions.  
15 Q Do you know why that notation was entered  
16 into your notes?  
17 A No.  
18 Q Let me show you what's been previously  
19 marked as Bates number and Exhibit Number 16030 and  
20 031 for identification. Do you recognize this  
21 document?  
22 (Witness reviewed the document.)



1 A Yes.

2 Q What is it?

3 A It looks like -- I suspect, I don't know,  
4 but I suspect that I prepared it. It's my bullet  
5 style. And it looks like trying to figure out what  
6 was going to happen in the process of gathering the  
7 information that the Secretary would need in order to  
8 make management decisions and testify before Congress  
9 regarding those decisions.

10 Q When you say gathering that information,  
11 you mean the Inspector General's investigation?

12 A That appears to -- yeah. Yep.

13 Q To be clear about this, was it your  
14 understanding that the Secretary was going to gather  
15 information to prepare for his testimony through some  
16 method other than -- or parallel to what the  
17 Inspector General was doing?

18 A No.

19 Q So your understanding is that the --

20 A Well, we certainly were contemplating  
21 talking to other Treasury witnesses ourselves. That  
22 was one possibility that had been considered.

1 Q In this particular document, are the  
2 references to preparation that you might take as  
3 counsel assisting the Secretary in preparing his  
4 testimony or is it reference to the Inspector  
5 General's investigation that was supposed to be sent  
6 to the Office of Government Ethics?

7 A Both, as well -- I mean the whole Office of  
8 Government Ethics thing started because the Secretary  
9 asked it to start. It was for the Secretary.

10 Q The Secretary asked an outside office to  
11 conduct a review to make a report?

12 A He asked the ethics experts.

13 Q And those ethics experts turned to the  
14 Inspector General's office in Treasury for  
15 assistance; correct?

16 A Right.

17 Q Did the outside ethics experts turn to the  
18 Office of General Counsel for assistance?

19 A They did not.

20 Q Did the Secretary turn to you in the Office  
21 of General Counsel either directly or indirectly and  
22 ask you to help him prepare for his testimony?

1 A Yes.

2 Q Now, my question to you is this, is this  
3 document 16030 and 16031 a discussion of preparation  
4 for your personal function of preparing the Secretary  
5 for his testimony or for the Inspector General's  
6 investigation that was supposed to be transmitted to  
7 the Office of Government Ethics?

8 A Primarily for my function, our function,  
9 for the Treasury general counsel function.

10 Q Did you understand with respect to your  
11 function that you would have any right to look at any  
12 RTC documents?

13 A Define "RTC documents."

14 Q I mean any document created by the  
15 Resolution Trust Corporation and held within its  
16 files.

17 A Held within its files?

18 Q Yes.

19 A It never came up as an issue.

20 Q Did you believe you would have a right to  
21 look at RTC documents that were transmitted to the  
22 Treasury Inspector General for the purpose of having

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1 the Treasury Inspector General prepare a report to  
2 OGE?

3 A No.

4 Q What is the third agency rule?

5 A Third agency rule is a rule that applies  
6 when you are responding to Congressional document  
7 inquiries. When you have documents of another agency  
8 in your files, you either consult with the other  
9 agency or you refer the documents to the other agency  
10 to respond to the Congressional request.

11 Q Is it limited to Congressional requests or  
12 is it applicable to other kinds of inquiries?

13 A The only two contexts in which I've ever  
14 had to think about it -- actually the Congressional  
15 requests are the only context I've ever had to think  
16 about it. I understand and it has been represented  
17 to me that it's the department's practice not to  
18 follow it when dealing with a grand jury subpoena.

19 Q Other than -- so with grand jury subpoenas  
20 the department's practice is to turn over --

21 A No, actually it's also followed, by and  
22 large, in the Freedom of Information Act context.

1 Q And the general principle of the third  
2 agency rule is that if agency A gives documents to  
3 agency B for a limited purpose that agency B won't  
4 turn them over to someone else unless they've checked  
5 with agency A; is that?

6 A The general rule is that when agency A has  
7 documents of agency B in its hands it will talk to  
8 agency B before disclosing them to someone else.

9 Q On page 16031, you have a bullet marked "IG  
10 factfinding" and two bullets down you say "IG  
11 interviews of Treasury witnesses. Has Francine made  
12 any progress of OGE." And it says underneath it  
13 "what has Francine heard from Pat Black on RTC  
14 regulations on information confidentiality."

15 What does that reference to Francine  
16 hearing from Pat Black refer to?

17 A My recollection on this is hazy but I  
18 learned at some point there was an RT -- or I'd  
19 heard -- someone mentioned that there was an RTC  
20 regulation on the confidentiality of information and  
21 I had never seen it, and I think I assume from this  
22 that Francine was trying to get it from Pat Black for

1 me.

2 Q Did you ever get it?

3 A Actually, I believe I have seen it at some  
4 point.

5 Q Did you get it between June 20th, 1994 and  
6 August 10th, 1994?

7 A I don't know for sure. I may have.

8 Q Is it fair to say, though, that as of the  
9 date of this document you were --

10 A By the way, as I understand it, this is not  
11 a secret document or anything; it's an RTC policy  
12 document.

13 Q Is it fair to say that as of June 20th,  
14 1994 you were at least generally aware that RTC  
15 documents or information had some confidentiality  
16 attached to them, or might have some confidentiality  
17 attached to them?

18 A I was aware that RTC was an agency and any  
19 agency has some confidentiality interests in some of  
20 its documents.

21 Q You were aware that there might be some  
22 regulations on that issue?

1 A Yeah, I was. Someone had made me aware of  
2 it.

3 Q Now --

4 A By the way, the reason that we were aware  
5 of that, someone -- actually, I don't know whether  
6 that was later. It had come up as an issue maybe as  
7 we were thinking about questions and answers for  
8 Bentsen's testimony back in March. I had known about  
9 it for a very long time.

10 By the way, it did not have anything to do  
11 with the conduct of this investigation from my  
12 perspective. I was not looking for it for the  
13 conduct of this information. It was relating back to  
14 what had happened in, you know, June -- I'm sorry,  
15 September or October of '93. My recollection is it  
16 was an item of curiosity for me.

17 Q Well, the point I want to make sure that we  
18 have clear is this. As of June 1994 you were aware  
19 that there was certain information generated by the  
20 RTC as to which there were RTC regulations governing  
21 their use and confidentiality; correct?

22 A I was aware that RTC had regulations

1 regarding confidentiality of information, presumably  
2 its information. What that information was I did not  
3 know.

4 Q Moving further down you have a bullet that  
5 says "Treasury counsel needs to know what Treasury  
6 witnesses' testimony will be"?

7 A Right.

8 Q Is that in connection with the counseling  
9 you would do to prepare the Secretary for his  
10 testimony?

11 A Yes.

12 Q And then underneath, is it fair to say,  
13 there are three options for getting that information?

14 A Yes.

15 Q One is to sit in on IG interviews?

16 A Uh-huh.

17 Q And it says "Ed disfavors"; correct?

18 A That's what it says.

19 Q Who is Ed?

20 A Knight.

21 Q Why did he disfavor that?

22 A I don't know.

1 Q The second says "follow IG interview with  
2 our own"?

3 A Right.

4 Q That indicates the possibility of  
5 conducting your own interview?

6 A Right.

7 Q The third says "review IG reports of  
8 interview. Bob disfavours. See Waco"?

9 A Right.

10 Q What is the reference to Bob disfavours?

11 A Bob McNamara.

12 Q Why did he disfavor reviewing --

13 A Apparently something similar was in Waco  
14 and he saw some problem with it.

15 Q What was the problem?

16 A I don't know.

17 Q Did you have a discussion about this issue?

18 A Probably. I assume that's how I knew that  
19 Bob disfavoured it.

20 Q Do you remember if he told you why he  
21 disfavoured it?

22 A I don't remember. The reference to "see

1 Waco" suggests that he said at least that it was a  
2 problem in Waco. Whether he -- I don't know. I  
3 don't really remember that.

4 Q Why was it necessary for Treasury counsel  
5 to know what the Treasury witnesses' testimony would  
6 be in order to prepare the Secretary's testimony?

7 A Because the Secretary would be expected to  
8 testify regarding the facts of the contacts when he  
9 went before the House and the Senate and he didn't  
10 know.

11 Q As of June 1994, were you aware that the  
12 Secretary himself was a fact witness concerning the  
13 facts?

14 A I was aware that Jean Hanson thought that  
15 the Secretary had known of -- well, something about  
16 discussion with the White House back in I guess  
17 February of '93 -- '94.

18 Q How did you know that?

19 A Because when I was working on questions and  
20 answers to prepare Bentsen for the testimony that he  
21 was giving before a number of appropriations  
22 subcommittees in March, three in March and one in



1 April of 1994, the very first -- it's interesting.  
2 Actually, I was preparing questions and answers when  
3 you don't know anything except what's been in the  
4 newspapers. Preparing questions is one thing but  
5 preparing answers is another. We didn't have any of  
6 the information.

7 Dennis Foreman and Steve and I were working  
8 on preparing those questions and answers and because  
9 we had no information we showed them to Jean Hanson  
10 and she wrote some notes on there that were cryptic  
11 to me at the time and largely remain cryptic now.  
12 But that suggested that senior Treasury officials may  
13 have known about a -- or maybe more than one meeting  
14 with the White House.

15 Q And you took that to include the Secretary  
16 himself?

17 A I did not know what it meant.

18 Q Well, you testified a moment ago that as of  
19 June 1994 you did understand that Ms. Hanson had the  
20 belief or had expressed the belief that the Secretary  
21 had knowledge about at least one or more contacts?

22 A Right.

1 Q Where did you get that information from?

2 A Later, within a matter of days, I found out  
3 that the Secretary and Jean had had a very brief  
4 conversation in which the Secretary told her that he  
5 had a different recollection than hers.

6 Q And how did you learn that?

7 A I don't remember.

8 Q From whom did you learn it?

9 A I don't remember from who.

10 Q When did you learn it?

11 A In March of '94, sometime. Probably early,  
12 before mid-March.

13 Q So you knew as of June 1994 that the  
14 Secretary was actually going to be a witness  
15 concerning the contacts and that his own testimony  
16 might be --

17 MR. PORTNOY: That wasn't the testimony  
18 that he knew he was going to be a witness, that the  
19 Secretary was going to be a witness.

20 MR. CHERTOFF: I said that he might be a  
21 witness -- let me withdraw the question.

22 BY MR. CHERTOFF:

1 Q You knew as of June of 1994 that the  
2 Secretary had factual knowledge concerning a material  
3 issue involving the contacts with Treasury -- between  
4 Treasury and the White House, and that his -- let me  
5 finish the question -- and that his recollection  
6 would be -- was in conflict with that expressed by  
7 Jean Hanson?

8 A Actually I don't know that he had factual  
9 knowledge. I knew that Jean Hanson thought he did.

10 Q And you knew that he said he did?

11 A Yeah.

12 Q So you knew there was going to be an issue  
13 about whether he knew about the contacts?

14 A Right.

15 Q You knew that would be an important issue?

16 A Uh-huh.

17 Q Correct? When you say "uh-huh" --

18 A No, I didn't consider it an important  
19 issue.

20 Q I want to make sure we take this step by  
21 step. In June of 1994 you were aware that Ms. Hanson  
22 had the view that Mr. Bentsen was aware of at least

1 one of these Treasury-White House contacts; correct?

2 A Yes.

3 Q You knew that Ms. Hanson had, in fact,  
4 expressed a view that she had told Mr. Bentsen about  
5 one of these contacts; right?

6 A No, that somehow he knew.

7 Q And you knew that the Secretary disagreed  
8 with Ms. Hanson on that point; correct?

9 A Uh-huh.

10 Q And you knew that because you were a  
11 participant in the preparations for the Secretary's  
12 testimony in March, so you were paying attention to  
13 it?

14 A Before the appropriations committee,  
15 correct.

16 Q You knew that the issue of whether there  
17 were contacts and how many contacts there were would  
18 be an important issue to the Senate; right?

19 A Yes.

20 Q You knew that whether the Secretary  
21 approved of those contacts or knew of those contacts  
22 would be an issue for the Senate?

1 A No, I did not.

2 Q You thought the Senate -- didn't it occur  
3 to you that the Senate would be interested in knowing  
4 if there were contacts the Secretary knew about --

5 A I need to draw a distinction for you. What  
6 the Senate considers important and what I consider  
7 important are not necessarily the same thing.

8 Q I am asking you --

9 A I did not consider it important whether the  
10 Secretary had known about it or not.

11 Q I'm asking you whether you, in your mind,  
12 in June of 1994 understood that the Senate might  
13 consider it important that the Secretary of the  
14 Treasury knew about a contact at the time that it  
15 occurred?

16 A Yes.

17 Q You knew the Senate might consider that  
18 important?

19 A I thought the Senate might consider it  
20 important.

21 Q And you knew that there might be -- that if  
22 the Secretary were called as a witness and if

1 Ms. Hanson were called as a witness there might be a  
2 difference in the testimony?

3 A Yes.

4 Q In June of 1994 did you discuss with  
5 Mr. Foreman or with anybody else the possibility that  
6 there should be some restriction on whether the  
7 Secretary should see Ms. Hanson's testimony regarding  
8 this issue?

9 A No -- oh, wait a minute. The Secretary  
10 reluctantly had agreed to a request that you and  
11 Mr. Codinha had made of the department that that he  
12 and other Treasury witnesses not see other Treasury  
13 witnesses' testimony.

14 Q And what was your understanding of what  
15 that agreement was?

16 A That -- I'm not sure it's appropriate to  
17 characterize it as an agreement. It may be. But in  
18 any case, the terms of it were that -- certainly the  
19 terms of the Senate's request, Senate staff's  
20 request, were that Treasury witnesses not see  
21 documents that had been produced from other Treasury  
22 witnesses' offices and that Treasury witnesses --

1 beyond that I'd actually -- to some extent that  
2 agreement was documented. And the details of it, I  
3 don't want to volunteer to testify about because I  
4 don't remember it that well.

5 Q Did the Secretary agree not to see or hear  
6 about the content of other Treasury witnesses'  
7 testimony before he testified himself in a  
8 deposition?

9 A I think that was the understanding.

10 Q Is it a fact that the Secretary did not  
11 get, either directly or indirectly, the content of  
12 other witnesses' testimony before the IG, before his  
13 deposition on the 27th of July, 1994?

14 A Yes.

15 Q Do you know when transcripts -- when did  
16 you first see transcripts of Ms. Hanson's deposition  
17 for the IG?

18 A Sometime around -- sometime after July 8th  
19 but before July 13th.

20 Q And did you help to prepare the Secretary  
21 for his testimony in the deposition?

22 A Yeah, later.

1 Q Before July 27?

2 A Yeah.

3 Q So that at the time that you assisted the  
4 Secretary in preparing for his deposition, you had  
5 seen Ms. Hanson's sworn testimony before the  
6 Inspectors General?

7 A But I had not read them and I had, in fact,  
8 subsequently returned them to Francine.

9 Q So you held them in your possession and you  
10 never read them?

11 A Right.

12 Q Why didn't you read them?

13 A I didn't have time.

14 Q Why did you return them to Francine?

15 A Because she asked for them back.

16 Q Did anybody else look at them?

17 A No.

18 Q When did she ask for them back?

19 A I don't remember, but it was within -- it  
20 was -- the whole thing happened between July 8th and  
21 July 13th as it's framed by my notes. I don't  
22 remember the dates.

- 1 Q Why did she ask for them back?  
2 A I don't know.  
3 Q She didn't tell you anything about that?  
4 A She was actually pretty reserved in  
5 discussing it, and I didn't see that it made a great  
6 deal of sense to engage in a discussion with her.  
7 She asked for it back, I gave it to her.  
8 Q Those transcripts first got to you on July  
9 8th?  
10 A No, I don't know that. No, I don't know  
11 that. What I know is that in my notes there is a  
12 note that Francine was going to send an E-mail to  
13 Cottos about Treasury counsel getting access to the  
14 transcripts. I know at some point I got them and  
15 there is a note that looks -- it looks like a note I  
16 made to myself for a call to Francine to tell her  
17 that I had returned them --  
18 Q Was it your --  
19 A -- on the 13th.  
20 Q Was it your understanding that you'd  
21 returned the transcripts because the Inspector  
22 General's office had raised an objection to

- 1 transcripts being furnished to anybody outside of the  
2 Inspector General's group?  
3 A I'm not sure why they were being returned.  
4 Q At the time you received transcripts from  
5 Ms. Kerner, do you know whether Mr. Knight received  
6 transcripts?  
7 A I have no information that he did. He did  
8 not get them from me.  
9 MR. PORTNOY: Did he testify that he  
10 received them from Ms. Kerner? I might have missed  
11 that.  
12 MR. O'CALLAGHAN: He did.  
13 MR. PORTNOY: I missed that, I'm sorry.  
14 THE WITNESS: I don't know the number. It  
15 was four or five transcripts. Something like that.  
16 BY MR. CHERTOFF:  
17 Q Let me show you what's been marked for  
18 identification as 16000. Again, are those your  
19 handwritten notes?  
20 A Uh-huh.  
21 Q And it comes out of your spiral notebook?  
22 A Right.



1 Q And they were contemporaneously entered on  
2 June 21st, 1994?

3 A Uh-huh.

4 (Witness reviewed the document.)

5 MS. STERGIS: Just a moment. I'm not  
6 finished.

7 (Pause.)

8 BY MR. CHERTOFF:

9 Q The initials at the top of the page are  
10 whose?

11 A Foreman's.

12 Q And does this reflect a telephone call or  
13 communication you had with Dennis Foreman?

14 A It actually looks more like the kind of  
15 note that I would write to make sure that I covered  
16 things in a call to Foreman.

17 Q And as you go down, would you read us what  
18 you wrote here?

19 A "Jane Ley called."

20 Q Who is Jane Ley?

21 A Jane Ley is the deputy general counsel,  
22 Office of Government Ethics. "Francine-Ken-Dennis

1 meeting. Memorandum of understanding. Subjects to  
2 deal with, information, evaluation of performance.  
3 Wall off Dennis from IG factfinding but Dennis," it  
4 looks like, and "JH," which would be Jean Hanson,  
5 "does need info as Treasury witness maybe in  
6 preparing Dennis and Jean. No need to identify what  
7 source of facts."

8 Q Now, what does that refer to?

9 A Actually there are two separate things  
10 there. The first appears to refer to what  
11 Francine -- the nature of Francine's relationship  
12 with the independent counsel.

13 Q Independent counsel or the Inspector  
14 General?

15 A Inspector General.

16 Q Was this something that Jane Ley could have  
17 raised?

18 A It could have been. It could have been. I  
19 don't recall ever talking to Jane about it, about --

20 Q Who raised the issue of Francine's  
21 relationship with the Inspector General?

22 A I don't know.

1 Q Do you know if the Inspector General,  
2 people in the Inspector General's office raised an  
3 objection?

4 A I don't know. As far as I know, Francine  
5 raised it.

6 Q And tell us again in that first section  
7 what the discussion is or what the note --

8 A It's not a discussion. It suggests that  
9 Jane Ley called Dennis about this -- I don't know if  
10 that's true or not -- and that they were in  
11 connection with what Jane called Dennis about, there  
12 was a need for a meeting between Francine and Dennis  
13 and Ken.

14 Q Ken is you?

15 A Yes, Ken is me.

16 Q Was there a meeting?

17 A Not that I recall.

18 Q And what were the subjects to be dealt with  
19 in the meeting?

20 A My assumption is that this relates to  
21 something that Francine, either for her own purposes  
22 or someone else thought it was a good idea, wanted to

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1 do to document the absence of a reporting  
2 relationship with respect to the work that she was  
3 doing on the Treasury-White House contacts between  
4 her and Jean Hanson.

5 Q And the specific reference to information  
6 and evaluation performance denotes what?

7 A Probably -- I'm not sure about  
8 information. Evaluation performance would be  
9 Francine was going to be doing legal work, assisting  
10 the Inspector General in conducting his factfinding  
11 and there was a concern that Jean Hanson should not  
12 evaluate her performance as she did that work.

13 Q Was there also a concern that Jean Hanson  
14 not get information about the investigation as it was  
15 going on?

16 A Probably.

17 Q What did you understand to be the reason  
18 for that concern?

19 A Presumably Jean was in some sense a subject  
20 or a target of whatever this inquiry was.

21 Q In other words, her conduct was a material  
22 issue in the inquiry?

1 A Clearly, yes.

2 Q And therefore there was a concern expressed  
3 by somebody that you were aware of as of June 21st  
4 that Francine, if she was going to work on the  
5 investigation, not be sharing information with or be  
6 evaluated by someone who's own actions were going to  
7 be the subject of --

8 A By Jean Hanson.

9 Q And you understood the principle to be that  
10 someone whose actions are being investigated  
11 shouldn't be someone who can control the  
12 investigation?

13 A It is reasonable to infer that principle as  
14 the concern that motivated raising the issue in the  
15 first place.

16 Q Did you see a concern about that?

17 A It wasn't something that I had given much  
18 thought to.

19 Q When it came to your attention on June  
20 21st, 1994 did you give it some thought?

21 A I don't remember this coming to my  
22 attention on June 21st. It could well have. What I

1 recall is that Dennis at one point called me and said  
2 that Francine was working on a memo to structure her  
3 relationship with the IG and with the general counsel  
4 for purposes of conducting this inquiry and he asked  
5 me to look at the memo that she had drafted.

6 Q A reference in the next passage, "wall off  
7 Dennis Foreman from IG factfinding, but Dennis  
8 Foreman and Jean Hanson does need information as  
9 Treasury witness."

10 What does that relate to?

11 A I don't know. It's what it says. It  
12 doesn't refresh any recollection of a conversation.

13 Q Who suggested that Dennis Foreman be walled  
14 off from IG factfinding?

15 A I don't know.

16 Q Did someone raise the concern as of June  
17 21st, 1994 that since Dennis Foreman's actions were  
18 the subject of the investigation too that he  
19 shouldn't be involved in the factfinding process?

20 A Other than -- and I don't remember the time  
21 frame, but other than Dennis himself with this  
22 concern that he had about never even seeing any of

1 the information that related to RTC's investigation  
2 of Madison, I don't remember anyone raising a concern  
3 about Dennis.

4 Q Does the term "wall off" mean something to  
5 you?

6 A Yeah, insulate.

7 Q Did either Dennis Foreman or somebody else  
8 as of June 21st take the position that Dennis Foreman  
9 would be insulated from the Inspector General  
10 factfinding?

11 A I don't know.

12 Q And then the concept that "DF and JH does  
13 need information as Treasury witness maybe in  
14 preparing Dennis Foreman and JH no need to ID what  
15 source of facts."

16 What does that passage reflect?

17 A I don't know.

18 Q Was that your concern?

19 A I don't think so.

20 Q Was it Jean Hanson --

21 A I don't remember it being specifically a  
22 concern of mine.

1 Q Was it Jean Hanson's concern?

2 A I don't know.

3 Q Was it Dennis Foreman's concern?

4 A I don't know.

5 Q Is the concept that's set forth in this  
6 note that although Dennis Foreman and Jean Hanson are  
7 supposed to be walled off from the factfinding, they  
8 needed the same information to be prepared as  
9 witnesses and it could be given to them?

10 A What information?

11 Q About what had been determined by the IG's  
12 factfinding?

13 A Oh, I don't know that that's a reference to  
14 that at all. They needed some information -- I don't  
15 know what information -- whether as I wrote this,  
16 there was any contemplation about specific  
17 information. It really doesn't -- I don't remember  
18 why I wrote this.

19 Q When it says here "maybe in preparing DF  
20 and JH no need to ID what source of facts," is the  
21 suggestion in that sentence that one could give  
22 information to Dennis Foreman and Jean Hanson as long

1 as you concealed where that information came from?

2 A It says what it says. It really doesn't  
3 refresh any recollection that I have.

4 Q At any point in time, did you, in your  
5 mind, consider the possibility that, in preparing  
6 either Jean Hanson or Dennis Foreman, you would use  
7 information gained from the Inspector General's  
8 investigation to prepare them, but simply not tell  
9 them where that information came from?

10 A Again, we were trying to figure out whether  
11 we would assist the Treasury witnesses in preparing  
12 at all. We really didn't get -- we never had a real  
13 opportunity to consider exactly how we would do it.

14 Q And you have no recollection of what  
15 prompted this note?

16 A No.

17 Q You don't know if you talked about this  
18 with Dennis Foreman?

19 A No, I don't. I mean there are any number  
20 of possibilities and I just don't remember what it  
21 was. I don't -- actually, I told you that I recalled  
22 a conversation which Dennis indicated to me that

1 Francine was working on a memo that would structure  
2 her relationship with the IG and the Office of  
3 General Counsel for purposes of assisting them with  
4 the IG with this inquiry. And he asked me to look at  
5 that, and I do remember having looked at it. And  
6 actually we've produced two copies of it, one a final  
7 and one with my notes on it. But beyond that, I  
8 don't remember.

9 Q You did write Exhibit 16000, that's your  
10 handwriting?

11 A Yes.

12 Q Let me show you what's been marked as  
13 Exhibit 10974, Bates number, for identification.

14 (Witness reviewed the document.)

15 Is that your handwriting?

16 A Yes.

17 Q Is that your spiral notebook?

18 A Yeah, it appears to be.

19 Q There's a faint notation at the top. Is  
20 that FK 6/22/94?

21 A It could be FK, could be EK.

22 Q Who is EK?



1 A EK is either Ellen Kulka or Ed Knight.  
2 Q And FK would be Francine Kerner?  
3 A Right.  
4 MR. CHERTOFF: Could I ask counsel to go  
5 back and supply us with a letter of what that is.  
6 MR. BUCKLES: Yes.  
7 BY MR. CHERTOFF:  
8 Q As you follow the page down, does this  
9 reflect a telephone call with Ms. Kerner?  
10 A It looks to me like it's me telling --  
11 writing down a reminder to call her.  
12 Q Does that suggest to you that it may be EK  
13 at the top, that it was a conversation -- a  
14 consequence of a conversation you had with Ed Knight?  
15 A That's really hard to tell.  
16 Q Now, it says here "call Francine. Can  
17 White House counsel sit in on IG interviews."  
18 A Yes, this was still -- I mean everybody was  
19 trying to figure out how they were going to get the  
20 information they needed to do their various jobs.  
21 Q Well, did the White House counsel contact  
22 you and ask you to see whether the White House

1 counsel could sit in on the IG interview?  
2 A I don't think so. That would, that wasn't  
3 normally -- if they had that kind of question, they  
4 would have contacted the IG counsel directly.  
5 Q Why were you concerned then about whether  
6 the White House counsel could sit in on the IG  
7 interviews?  
8 A I was interested in how the whole process  
9 was going to work.  
10 Q Did you have any responsibilities in terms  
11 of helping the White House conduct its own  
12 examination of these issues?  
13 A No.  
14 Q Were you involved in preparing White House  
15 witnesses?  
16 A No.  
17 Q Why then was it a matter of concern to you  
18 about whether the White House counsel --  
19 A It was a matter of interest. The process  
20 was a matter of interest.  
21 Q Was this something that was part of your  
22 responsibility, or something that was a matter of

1 curiosity?

2 A I suppose it was my responsibility to know  
3 how the process was going to go.

4 Q Did anybody --

5 A It also had implications for how Treasury  
6 counsel would be able to handle it. I mean it was  
7 just there was no -- well.

8 Q Was there a request from the Secretary's  
9 office to determine how White House counsel could get  
10 information about the IG interviews?

11 A No.

12 Q No?

13 A No.

14 Q The next line says "what about" and I can't  
15 read the next word.

16 A What about getting.

17 Q There is something, what about us --

18 A What about Treasury getting.

19 Q Treasury getting access to IG interview  
20 minutes?

21 A Right.

22 Q And then the next one, which is crossed

1 out, says "transcripts of IG interviews. Does IG,"  
2 and what's the next word?

3 A Plan.

4 Q "Do we want." What do those notes refer  
5 to?

6 A It again reflects we were thinking about  
7 how we would be able to get the information that we  
8 needed to do our jobs.

9 Q And in this connection, when you say our  
10 jobs?

11 A Actually I'm not even sure at this stage of  
12 the game. Oh, I see this is a question about whether  
13 the IG is going to do transcripts, so that we would  
14 be able to -- so that the question would then come  
15 up, do we want them.

16 Q When you say we, you mean you and  
17 Mr. Knight in order to prepare the Secretary for his  
18 testimony?

19 A Me, Mr. Knight and Mr. McHale and  
20 Mr. McNamara.

21 Q In order to prepare the Secretary for his  
22 testimony?

1 A Yeah, for whatever -- yeah.

2 Q Let me show you what's been marked for  
3 identification as Exhibit 389, Bates number. Is this  
4 the memorandum to which you referred earlier?

5 MS. STERGIS: Excuse me, Counsel. I have  
6 not had an opportunity to read this nor have I been  
7 provided any of these documents before you've started  
8 examining the witness.

9 MR. CHERTOFF: I thought you produced these  
10 documents.

11 MS. STERGIS: But I would like the  
12 opportunity to read it now before you examine the  
13 witness.

14 (Witness reviewed the document.)

15 BY MR. CHERTOFF:

16 Q Do you recognize this memorandum?

17 A Yes.

18 MS. STERGIS: Sir, I'd just like to clarify  
19 for the record I have not been involved at all in the  
20 Treasury document production, and further it's not  
21 clear to me whether this was from the Treasury  
22 production or from the IG production. I have not

1 seen the IG production. May I inquire, was it from  
2 the Treasury or the IG production?

3 MR. CHERTOFF: I must say I can't tell you  
4 off the top of my head.

5 THE WITNESS: I have not seen a version of  
6 this version stamped confidential before. I don't  
7 know whether that's your stamp or somebody else's.

8 BY MR. CHERTOFF:

9 Q It's not the Senate's stamp. Let me ask  
10 you, do you recognize the document itself?

11 A Yes, but I have never seen one with a  
12 confidential stamp on it. I can only assume that  
13 this is the same document that I have seen. I  
14 haven't done a word-to-word comparison.

15 Q Is the content the same?

16 A Yes.

17 Q Do you remember working on a memorandum  
18 that was to go to the deputy Inspector General  
19 regarding Ms. Kerner's circumstances as she  
20 participated as counsel to the Inspector General in  
21 this inquiry regarding the White House-Treasury  
22 contacts?

1 A No.

2 Q Were you asked to look at a memo that was  
3 going to be addressing how Francine Kerner would be  
4 evaluated and how she would be handled  
5 administratively?

6 A Yes.

7 Q Is this the memorandum that you were asked  
8 to look at in draft form?

9 A Yeah, I was asked to look at a draft of it.

10 Q How come you were asked to look at it?

11 A I frequently have advised the Office of  
12 General Counsel concerning its relationships with the  
13 counsel to the Inspector General, going back to 1989  
14 when I drafted the Treasury order that implemented  
15 the statutory Inspector General within the Department  
16 of the Treasury.

17 Q Who raised the issue of preparing a  
18 memorandum like this?

19 A I don't know who raised the issue of  
20 preparing a memorandum. Dennis had called me and  
21 told me that Francine had contacted him about it, and  
22 that he had asked her to go and see me, and I did.

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1 Q Did you understand that the issue that was  
2 being addressed by the memorandum was the need to  
3 make sure that the personnel who were involved in  
4 conducting or having access to the product of this  
5 Inspector General investigation would be completely  
6 independent from the general counsel's office?

7 A I actually at the time understood it as  
8 completely independent from Jean Hanson.

9 Q I want to direct your attention to the  
10 second paragraph, where it says "given the nature of  
11 the inquiry, we have therefore agreed that Ms. Kerner  
12 and members of her staff will report solely to the  
13 Inspector General on any matters relating to the  
14 investigation. Neither Ms. Kerner nor her staff will  
15 communicate any information about the substance of  
16 this inquiry without specific authorization from the  
17 Inspector General."

18 Did you understand that this paragraph  
19 indicated that Ms. Kerner and her staff were not to  
20 talk about any information about the substance of  
21 this inquiry with anybody outside of the Inspector  
22 General's office without the Inspector General's

1 permission?

2 A Yes.

3 Q Did you understand that that included  
4 anybody within the Office of General Counsel?

5 A Yes.

6 Q In other words, the restriction this  
7 memorandum placed was not merely a restriction on  
8 communicating with Jean Hanson, it was a restriction  
9 on communicating with anybody in the Office of  
10 General Counsel; correct?

11 A Right -- with anybody?

12 Q Outside of the Inspector General's office.

13 A Right.

14 Q And that would include anybody in the  
15 Office of General Counsel?

16 A It would include anybody else in the  
17 department.

18 Q And that would include you?

19 A Right, regarding the substance of the  
20 inquiry.

21 Q And likewise, there was a restriction on  
22 her reporting to anybody but the Inspector General on

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1 any matters relating to the investigation; correct?

2 A Well, yeah, I understood that to relate to  
3 reporting relationship. In other words, on an org  
4 chart, the normal org chart has Francine reporting to  
5 the deputy general counsel.

6 Q With this investigation, this letter or  
7 this memorandum indicates that she was to report on  
8 matters relating to the investigation directly to the  
9 Inspector General?

10 A Right.

11 Q And not to anybody else; right?

12 A Yeah, for organizational purposes.

13 Q Well, was it your understanding that she  
14 could report to others for some other purpose with  
15 respect to this investigation?

16 A I did not understand her to be disabled  
17 from talking to anybody. I understood that this was  
18 an adjustment of her normal organizational  
19 relationship.

20 Q I want to be quite clear about this.

21 A This, by the way, is an issue with a long  
22 history within the department.



1 Q I'm interested only, frankly, in this  
2 memorandum because we're dealing with this issue  
3 here. My question to you is, putting aside casual  
4 social conversation or discussions about matters  
5 unrelated to the investigation --

6 A Unrelated to the substance of the inquiry.

7 Q Let's direct your attention back to Exhibit  
8 389.

9 A Okay.

10 Q There are two provisions in the second  
11 paragraph; correct?

12 A Right.

13 Q One provision says that Ms. Kerner shall  
14 report solely to the Inspector General on any matters  
15 relating to the investigation?

16 A Right.

17 Q Correct?

18 A Right.

19 Q And you agree with me that that excludes  
20 anybody in the general counsel's office; correct?

21 A It excludes any organizational reporting  
22 relationship with anybody in the general counsel's

1 office.

2 Q Do you see the word "organizational" or  
3 "reporting" --

4 A You asked me how I understood it.

5 Q No, I'm asking you whether you see in the  
6 language a reference to --

7 MR. PORTNOY: I think the witness has  
8 answered --

9 MS. STERGIS: Objection; argumentative.

10 MR. PORTNOY: -- how he understands this  
11 document and the fact that you want him to understand  
12 it differently isn't going to change his  
13 understanding.

14 BY MR. CHERTOFF:

15 Q Did you have a discussion with somebody  
16 where you said or where they said to you, of  
17 course -- in substance, of course, Ms. Kerner can  
18 continue to report in a nonorganizational way about  
19 matters relating to this investigation --

20 A No.

21 Q -- to the Office of the General Counsel?

22 A No.

1 Q Was it your understanding, after this  
2 memorandum was written, that Ms. Kerner would be  
3 dealing, would be reporting to you or anyone in the  
4 general counsel's office about any subject related to  
5 the investigation?

6 A In an organizational sense, no.

7 Q In any sense?

8 A I did not take this -- first of all,  
9 Francine could talk to anybody the IG said she could  
10 talk to.

11 Q Assuming the Inspector General had not  
12 given approval?

13 A I assumed that Francine would not discuss  
14 the substance of this inquiry with me without the  
15 Inspector General being happy with it.

16 Q That's not the question. The question is  
17 this. Was it your understanding, after this  
18 memorandum was promulgated, that without the  
19 permission of the Inspector General, Ms. Kerner would  
20 be permitted to report to someone in the general  
21 counsel's office about any matter related to the  
22 investigation?

1 A In an organizational sense, no.

2 Q In any other sense, did you believe she  
3 could do so?

4 A This memo indicates that she can talk about  
5 something that is not the substance of the inquiry  
6 even without authorization from the Inspector  
7 General. She can talk about anything she wants with  
8 his authorization.

9 Q I want to take the question step by step.  
10 Let's assume -- let's put out of the question the  
11 possibility of specific authorization from the  
12 Inspector General. The question is, putting that  
13 possibility aside, was it your understanding under  
14 this memorandum that there was any sense in which  
15 Ms. Kerner was supposed to continue reporting to the  
16 general counsel's office on any matter relating to  
17 the investigation?

18 MS. STERGIS: Objection; asked and  
19 answered.

20 MR. CHERTOFF: I don't believe it has  
21 been.

22 BY MR. CHERTOFF:

1 Q I'd like to ask you to answer it.

2 A Not in an organizational sense. I did not  
3 take the word "reporting" there -- and I tried to  
4 tell you before but you didn't listen to me, that I  
5 come to this with a long history of negotiating with  
6 the Office of the Inspector General over whether or  
7 not there will be independent counsel. And when we  
8 talk about reporting, we're talking about an  
9 organizational reporting relationship. I am talking  
10 about an organizational reporting relationship. I  
11 didn't write this but that's the way I understood it.

12 Q Does that long history --

13 A And in fact, it draws a distinction in the  
14 first sentence between organizationally reporting  
15 relationship and in the second between discussions.

16 Q Does this long history of negotiating  
17 reporting relationships involve situations where the  
18 Inspector General was investigating conduct within  
19 the Office of General Counsel?

20 A It contemplated that as a possibility.

21 Q And there were instances where that  
22 happened?

1 A No.

2 Q That you negotiated --

3 A But it contemplated -- that was one of the  
4 issues that the Inspector General had raised in those  
5 discussions with the general counsel and the deputy  
6 secretary in years past.

7 Q And it was contemplated that, in a  
8 situation like that, there was any sense in which the  
9 Inspector General's counsel would be reporting to the  
10 Office of General Counsel?

11 A There are a lot of very, very long,  
12 protracted negotiations. To speak of what was  
13 contemplated there is --

14 Q I want to get back to this situation and  
15 I'm going to ask you again because I'm having  
16 difficulty understanding what the answer is.

17 MR. BUCKLES: Counsel, can I suggest that  
18 one of the things that might help us out maybe if you  
19 have a definition of what "reporting" is because --

20 MR. CHERTOFF: What will help me is, I'm  
21 just dealing with the English on the page.

22 BY MR. CHERTOFF:

1 Q Is there any sense in which you believed  
2 after this memorandum was published, that without the  
3 permission of the Inspector General, Ms. Kerner could  
4 report to the Office of General Counsel on any  
5 matters relating to the investigation?

6 A Not in an organizational reporting sense.  
7 You asked me what --

8 MS. STERGIS: Counsel, please allow the  
9 witness to finish his answer.

10 BY MR. CHERTOFF:

11 Q Is there any reporting sense in which you  
12 believed after this memo was promulgated, that  
13 Ms. Kerner could continue to report to the Inspector  
14 General on matters relating to the investigation  
15 without the prior permission of the Inspector  
16 General?

17 MS. STERGIS: I'd like to hear the question  
18 read back, please.

19 (The reporter read the record as requested.)

20 BY MR. CHERTOFF:

21 Q I withdraw the question. I misspoke.  
22 After this memo was published, was there

1 any sense in which you believed Ms. Kerner could  
2 continue to report to the general counsel's office on  
3 any matter relating to the investigation without the  
4 prior permission of the Inspector General?

5 A Yes.

6 Q In what sense?

7 A I believe that she could talk to us about  
8 the process they were going to follow.

9 Q And what would that include?

10 A I mean from my perspective, what it  
11 included was, you know, how they would do the  
12 interviews; frankly when we would get the information  
13 that the interviews would produce so we could prepare  
14 the Secretary for his fulfillment of his management  
15 responsibilities, and for testifying about having  
16 done so before the Senate.

17 Q Was it your understanding that she could  
18 tell you the order in which interviews were to be  
19 conducted?

20 A It was certainly my understanding that she  
21 could tell me when a witness was scheduled -- she was  
22 telling me when witnesses were scheduled for

1 interviews.

2 Q Could she tell you what questions were  
3 going to be asked?

4 A No. I didn't think about whether she could  
5 tell me that. She didn't tell me that.

6 Q Could she ask you for advice about what  
7 questions should be asked?

8 A The question didn't come up. I didn't  
9 think about it at the time. I'm not sure she  
10 couldn't seek advice whenever she felt it was  
11 appropriate to get it.

12 Q So you felt, under the terms of this  
13 memorandum, she could seek advice from the Office of  
14 General Counsel concerning how questioning of  
15 witnesses in the IG's investigation should be  
16 conducted?

17 A If you are asking me what I thought at the  
18 time, I did not think that at the time. I didn't  
19 think about that at all.

20 Q Could she submit a draft of the Inspector  
21 General's report to the general counsel's office for  
22 editing?

1 MS. STERGIS: A draft of which report?

2 BY MR. CHERTOFF:

3 Q Of the Inspector General's office to the  
4 Office of General Counsel for editing.

5 A Presumably, if she had the IG's  
6 concurrence.

7 Q Without the IG's concurrence?

8 A I don't know. I mean it does -- I don't  
9 know. You understand that my role in this memorandum  
10 was the edits which are shown. I had no part in  
11 writing it other than the edits that are shown on a  
12 copy of the document we've produced.

13 Q You were aware of it, you were aware that  
14 there was a final version that was promulgated?

15 A Oh, yeah.

16 Q And you understood that that final version  
17 bound Ms. Kerner?

18 A Sure.

19 Q Now, within the Office of General Counsel,  
20 apart from Ms. Kerner, at any time between June and  
21 August 5th, 1994, was there any kind of wall or  
22 insulation created around Ms. Hanson and Ms. Foreman?



1 A Mr. Foreman.

2 Q Mr. Foreman. I'm sorry.

3 A Certainly Ms. Hanson -- well, mostly Jean  
4 wasn't there. I don't know that there was any formal  
5 wall created around it. I think Jean had her own  
6 discomfort about talking to us, and as a practical  
7 matter, it didn't happen.

8 Q Was there any memorandum or action of any  
9 kind taken to formally separate Ms. Hanson and  
10 Mr. Foreman from any information generated in the  
11 course of the Inspector General's investigation?

12 A There were informal steps with respect to  
13 Mr. Foreman; as I mentioned before, he didn't want  
14 it. And Jean wasn't there. So there was no formal  
15 step taken

16 Q So there was never a memorandum written  
17 along the lines of Exhibit 389 that, in any sense,  
18 indicated that there was a restriction within the  
19 Office of General Counsel on communicating  
20 information about the substance of the Inspector  
21 General's inquiry to Ms. Hanson?

22 A No.

1 Q Likewise, there was no memorandum along the  
2 lines of Exhibit 389 that ever restricted the  
3 communication of information about the substance of  
4 the Inspector General's inquiry to Mr. Foreman;  
5 correct?

6 A Right.

7 (Recess.)

8 BY MR. CHERTOFF:

9 Q Were you involved at all in discussions  
10 concerning the time frame within which the Inspector  
11 General would complete his work or the Inspectors  
12 General would complete their work?

13 A Yes.

14 Q With whom?

15 A Primarily with Ed Knight and Bob McNamara,  
16 Steve McHale and myself.

17 Q When did those occur?

18 A Over and over again.

19 Q And what was the issue being discussed  
20 about timing?

21 A Would the Inspector General get back to OGE  
22 with the facts in time for OGE to give the Secretary

1 the advice that he had asked for before he had to go  
2 testify before Congress, and also so that he could  
3 decide what, if any, actions he was going to take  
4 before he had to testify before Congress.

5 Q Was there a discussion about how to speed  
6 up the IG's investigation?

7 A How to do it?

8 Q Yes.

9 A No.

10 Q Was there a discussion about whether it  
11 could be speeded up?

12 A There was discussion about whether it would  
13 be done in time. I don't remember any discussion  
14 about how to speed it up or --

15 Q Was there a deadline?

16 A The Senate's -- well, actually I'm not sure  
17 that. I don't remember when we -- the deadline --  
18 well, there was a deadline for the work that we had  
19 to do.

20 Q Was there a deadline for the Inspector  
21 General's work?

22 A I don't believe anyone set any particular

1 deadline.

2 Q Did you ever hear of anybody communicating  
3 to the Inspector General that the work had to be  
4 finished by a certain date so it could be up to OGE  
5 and be ready for the Secretary?

6 A No, I don't remember communicating, or  
7 anyone communicating, to the Inspector General dates  
8 by which they'd have to complete their work.

9 Q Was there discussion about which you were  
10 aware about the scope of the Inspector General's  
11 investigation?

12 A Not that I was involved in. Not that I  
13 know of. I mean -- well, I know that the Office of  
14 Government Ethics and the Inspector General were  
15 that -- OGE, in essence, was trying to figure out  
16 what provisions of the standards of conduct would  
17 apply to the contacts that had been reported in the  
18 press. And I sort of generally understood that they  
19 were trying to help the IG figure out what to look at  
20 in order that OGE could give the advice to the  
21 Secretary he sought.

22 Q Was there discussion about how far the

1 Inspectors General should delve in the White House to  
2 see where communications about RTC matters were  
3 transmitted?

4 A Not that I was involved in or ever became  
5 aware of.

6 Q Were you involved in dealing with the White  
7 House on their production of documents to the  
8 Inspectors General?

9 A I was -- I became aware of it -- I'm not  
10 sure if I even became aware of it before it  
11 happened. I certainly in no way coordinated it. I  
12 wasn't involved in making it happen. I was aware  
13 that it happened.

14 Q Did you get copies of the documents from  
15 the White House that were produced to the Inspector  
16 General?

17 A I think so, but I'm not sure.

18 Q Were they transmitted to you first so that  
19 you could transmit them to the Inspector General?

20 A I don't believe so. I don't believe so.

21 Q Where did you get your copies of the White  
22 House --

1 A From the White House.

2 Q Were there conditions attached to your  
3 receiving them?

4 A Yeah, basically conditions of  
5 confidentiality.

6 Q Written conditions?

7 A I don't think there were written  
8 conditions.

9 Q Was there a transmittal letter?

10 A I don't recall there being a transmittal  
11 letter.

12 Q Did you receive these documents from the  
13 White House at the same time that they were being  
14 furnished to the Inspector General?

15 A I don't know.

16 Actually I have seen correspondence that  
17 tells me that they were transmitted to the Inspector  
18 General on the 5th or 6th of July. I don't remember  
19 when we got them.

20 Q Did you get them before Secretary Bentsen  
21 was deposed?

22 A Yes.

- 1 Q Did you get them before the House hearings?  
2 A The House hearings, you mean before --  
3 Q Before the House hearings.  
4 A When did the House hearings start?  
5 Q In late July.  
6 A Yeah, I'm pretty sure we had them before  
7 that.  
8 Q Did you get them at the time you first got  
9 transcripts from Francine Kerner?  
10 A I don't know. I suspect we got them before  
11 then, but I don't know.  
12 Q Would you say you got them in early July?  
13 A I don't remember exactly when we got them.  
14 Q Approximately in early July?  
15 A I honestly don't remember when we got them.  
16 Q Did you furnish any transcripts of IG  
17 interviews or depositions to the White House?  
18 A Did I personally?  
19 Q Yes.  
20 A No.  
21 Q Do you know of anybody who did?  
22 A Yes.
- 

- 1 Q Who?  
2 A My deputy did.  
3 Q Who is that?  
4 A Steve McHale.  
5 Q When did he do that?  
6 A On July 23rd.  
7 Q Before July 23rd, were any transcripts  
8 furnished to the White House, that you know of, from  
9 the Inspector General's investigation?  
10 A No.  
11 Q Were there summaries of transcripts that  
12 were conveyed to the White House before July 23rd?  
13 When I say "summaries of transcripts," I'm referring  
14 again to the IG transcripts.  
15 MS. STERGIS: What do you mean, by the  
16 White House?  
17 BY MR. CHERTOFF:  
18 Q To anybody in the White House.  
19 A No.  
20 Q Was the content of any deposition  
21 transcript developed by the Inspectors General  
22 conveyed to the White House before July 23rd?

1 A Not that I know of.

2 Q Let me direct your attention to Exhibit

3 16002. Again, are these in your handwriting?

4 A Yeah.

5 Q And are they from the spiral notebook --

6 A Hold on a second. Let me read them.

7 (Witness reviewed the document.)

8 Okay.

9 Q Are they from the spiral notebook that you  
10 were keeping contemporaneous notes in?

11 A They were from the spiral notebook that I  
12 kept all my notes in.

13 Q Now, I can't read the note at the top. Can  
14 you?

15 A Neither can I.

16 MR. CHERTOFF: Again I'm going to ask that  
17 these be furnished with a better copy.

18 MR. BUCKLES: Yes.

19 BY MR. CHERTOFF:

20 Q Does it seem to relate to a telephone  
21 conversation?

22 A Yeah -- well, it seems -- it looks like the

1 kind of note that I would have written in  
2 anticipation of a telephone conversation.

3 Q And can you go through the notations?

4 A "IG on private counsel document access and  
5 attorney proffers. Meet with Cesca re: attorney  
6 proffers." And then the relationship of the next  
7 line of next to the previous line of text, I'm not  
8 sure. It says "with cross-fertilization and document  
9 tours. Meeting with Cesca. Can't let Senate/House  
10 interview our folks before we do. Three days before  
11 Senate interview."

12 Q Now, the upper part of the page before the  
13 redaction, would you explain what that refers to?

14 A It looks to me -- I don't remember what it  
15 refers to. But I surmise that someone had a concern  
16 about whether the IG would have a problem with  
17 private counsel having access to the documents that  
18 we had produced to Fiske and with private counsel  
19 attorneys coming in and telling us what their clients  
20 had testified about.

21 Q Now, when you say coming in and telling you  
22 what their clients had testified about, that means



1 you and Mr. McNamara?

2 A Right.

3 Q And that was in connection with your  
4 preparation of the Secretary?

5 A Right.

6 Q So at this point in time, did you envision  
7 that you might be able to get from the private  
8 attorneys information about what the individual  
9 witnesses had testified about before the Inspector  
10 General?

11 A At this point in time, that seemed to us to  
12 be one way that we might get information.

13 Q And that would avoid the need to get the  
14 actual transcripts of the depositions?

15 A I don't know that that's a necessary  
16 corollary.

17 Q You saw a benefit to getting the  
18 transcripts of the depositions in addition to getting  
19 the proffers?

20 A We were trying to figure out ways to get  
21 information anyway we could in the compressed time  
22 frame we had to deal with. Certainly attorney

1 proffers were one thing we had contemplated.

2 Q What does the reference to  
3 cross-fertilization mean?

4 A I don't know.

5 Q Does that have to do with information being  
6 transferred from or being commingled from different  
7 sources?

8 A I don't know what it refers to.

9 Q Does it involve the possibility of  
10 contaminating one witness's testimony by letting the  
11 witness know what others have said?

12 A I don't know.

13 Q What do document tours mean?

14 A Document tours means showing people  
15 documents.

16 Q The reference to meeting with Cesca, was  
17 this a report of a meeting or a proposal for what was  
18 going to be discussed in a meeting?

19 A I can't tell what the date of this is. I  
20 met with Bob Cesca and Jim Cottos and Francine Kerner  
21 on June 28th, and I simply don't know what the  
22 relationship between that meeting and this note is,

1 whether it's before or after.

2 Q Now, this reference to "can't let  
3 Senate/House interview our folks before we do three  
4 days before Senate interview," what does that mean?

5 A I have no idea.

6 Q Whose opinion was that it would be a bad  
7 idea to have Senate or House interviews take place of  
8 the Treasury people before Treasury interviews?

9 A I don't recall.

10 Q Can you think of any reason why someone  
11 would have thought that was desirable?

12 A Why what was desirable?

13 Q To make sure that the Senate/House  
14 interviews followed on the interviews conducted by  
15 Treasury person.

16 A Well, except for the normal fact that it's  
17 our job to manage our agency and not the Senate's, I  
18 can't think of any other reason.

19 Q That was the reason you wanted to --

20 A I don't know whether that was the reason  
21 reflected here or not. That wasn't the question you  
22 asked. You asked can I think of any reason.

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1 Q And that's the reason you think of, that it  
2 was in order because it was your job to manage the  
3 agency?

4 A My thought about that reason is a product  
5 of now. I have no idea what that note refers to.

6 Q Now, you indicated you in fact had a  
7 meeting with Mr. Cesca on the 28th?

8 A Right.

9 Q I'm going to show you 16003. Is that  
10 again, in your own writing in your spiral notebook, a  
11 record of something that transpired at that meeting?

12 A I don't know whether it's something that  
13 transpired at the meeting or whether it's something  
14 that I might have talked with Bob about before the  
15 meeting or after the meeting.

16 Q And again, can you read this to us and tell  
17 us what it refers to?

18 A "Private counsel proffers to Treasury  
19 attorneys. Not till IG finishes all Treasury  
20 interviews."

21 Q Was that Mr. Cesca's view as communicated  
22 to you?

1 A It may have been. I don't know.

2 Q Did Mr. Cesca tell you that the Inspectors  
3 General wanted to finish their interviews before you  
4 and Mr. McNamara got proffers from the private  
5 counsel?

6 A He may well have.

7 Q Did he tell you he wanted that because he  
8 didn't want to have counsel who might be representing  
9 the witnesses know what other witnesses had said  
10 until after all the interviews were completed?

11 A I have no recollection of him saying  
12 anything like that to me.

13 Q Let me direct your attention now to Exhibit  
14 16004 for identification.

15 (Witness reviewed the document.)

16 A Yeah.

17 Q Again, is this a note in your handwriting  
18 in your spiral notebook?

19 A Yes.

20 Q The notation at the top, what does that  
21 say?

22 A "For Jane S.," Jane Sherbourne, "telephone

1 conversation."

2 Q What does that indicate?

3 A That indicates that these were things that  
4 I wanted to talk about with Jane when I called her.

5 Q The date is July 1, 1994?

6 A Right.

7 Q What were the issues you wanted to talk to  
8 Jane Sherbourne about?

9 A When Treasury and White House would  
10 exchange copies of their respective documents with  
11 each other, whether and when.

12 What their discussions with the Senate  
13 Banking Committee were regarding confidentiality of  
14 documents that were being turned over or would be  
15 turned over to the Senate.

16 This "grand jury will White House get, do  
17 they hear Senate Banking will seek." I'm not sure  
18 what that was about. I mean the Senate had already  
19 asked for some documents that we had turned over to  
20 the grand jury, coincidentally we had turned over to  
21 the grand jury, the Fiske grand jury so I'm not sure  
22 what that's about.

1 "Treasury presence at White House  
2 interviews of Treasury folks. Was that a way that we  
3 could arrange to get information."

4 Three or four pages of White House  
5 sensitive documents. That presumably is documents  
6 that the White House did not want to furnish us.  
7 What we needed to talk about those, I'm not sure.

8 And "debrief on their Hill discussions,"  
9 presumably they were up talking to the Hill and we  
10 wanted to hear what they had heard.

11 Q Directing your attention to the entry that  
12 says "Treasury presence at White House interviews of  
13 Treasury folks," when you say Treasury presence, in  
14 this context do you mean yourself?

15 A Treasury counsel, I'm pretty sure that's  
16 what it would mean.

17 Q And at this point, were you considering the  
18 possibility of obtaining the information you needed  
19 to prepare the Secretary by sitting in on the White  
20 House interviews of Treasury personnel?

21 A We were considering that as one way of  
22 obtaining information we needed.

1 Q Was that because at that point you weren't  
2 sure the Inspector General would provide you with  
3 copies of the transcripts?

4 A It was because it was a way that was  
5 available. I wouldn't tie those two together  
6 necessarily.

7 Q Were you casting about for different ways  
8 you could find out about what the witnesses were  
9 saying concerning Treasury-White House contacts so  
10 you could have that information to prepare your  
11 Secretary?

12 A To enable the Secretary to perform his  
13 responsibilities and to testify about them, yep.

14 Q When you say "to enable the Secretary to  
15 perform his responsibilities," you knew that OGE was  
16 going to be furnishing a report to the Secretary  
17 detailing their findings and advice; correct?

18 A Actually we knew that OGE was going to be  
19 giving the Secretary advice about whether ethics  
20 rules had been violated.

21 Q And you knew that that would be the end  
22 product of the Inspector General's investigation?

1 A Well, it would be built on the Inspector  
2 General's factfinding.

3 Q And so that, when that was submitted, there  
4 would be a body of factfinding that would be  
5 available and that would support the OGE report;  
6 correct?

7 A Well, we knew that the OGE would advise us  
8 whether facts found by the Inspector General  
9 evidenced violation of any provisions or the  
10 standards of conduct.

11 Q Now, your desire to get facts from the  
12 witnesses was to assist you in preparing the  
13 Secretary to testify?

14 A Right, about what had happened.

15 Q And you were, during this period of time in  
16 late June or early July, casting about for ways that  
17 you could obtain information about what had gone on,  
18 what had been -- what these witnesses were saying so  
19 that you could then use that to prepare the Secretary  
20 for his testimony?

21 A I guess I have a problem with "casting  
22 about for ways." We were considering what options

---

1 were available.

2 Q So you could get that information?

3 A Right.

4 Q Because it was important for you to have  
5 the information about what the witnesses were saying  
6 in order to allow you to prepare the Secretary to  
7 testimony?

8 A In the first instance, it was important to  
9 know what had happened so that the Secretary would  
10 determine what action was appropriate. And in the  
11 second instance, he would have to talk about what had  
12 happened and what he had done about it to the Senate  
13 and the House.

14 Q And you did not want to simply wait for OGE  
15 to complete its work and then have that transmitted  
16 to the Secretary to give him the information he  
17 needed?

18 A We had concerns that OGE might very -- in  
19 fact OGE, later, on in the process, said that -- we  
20 had concerns that OGE would not get back to the  
21 Secretary with their advice before he had to  
22 testify. They had told us that there was a risk that



1 that would happen and they had offered to come brief  
2 him if that was what was going to happen.

3 Q So that OGE itself indicated that, if there  
4 was a problem concluding the report, they would be  
5 prepared at least orally to give the Secretary  
6 preliminary review of their advice?

7 A Advice.

8 Q So that you knew that that would be  
9 available in some form or another to the Secretary  
10 when he testified?

11 A Eventually we knew that. I'm not sure  
12 we -- I don't remember when that offer was made by  
13 OGE.

14 Q And at this point in time, which is to say  
15 around July 1, you were considering alternative ways  
16 you could get information about what the witnesses  
17 were saying so you could use that to prepare the  
18 Secretary on your own?

19 A Right.

20 Q Let me show you what's been marked as 16005  
21 for identification.

22 (Witness reviewed the document.)

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1 Again, is that in your handwriting in your  
2 spiral notebook?

3 A Yes.

4 Q It's dated July 1st, 1994 and it has the  
5 initials DF at the corner. Does that refer to Dennis  
6 Foreman?

7 A In all likelihood it does, yes, sure.

8 Q It indicates "IG interview Dennis 8:30  
9 Wednesday afternoon, Beth's notes later." What are  
10 Beth's notes?

11 A Dennis had had a conversation with Beth  
12 Nolan. Beth's notes of that conversation were in  
13 documents that the White House had provided to us.  
14 And this sounds like a decision that Beth's notes  
15 would not be shown to Dennis until later.

16 Q Whose decision?

17 A Unclear.

18 Q And it goes on to say "two parts: one,  
19 facts; two, ethics opinions"?

20 A Right.

21 Q What does that reflect?

22 A In all likelihood a guess about what the IG

1 would talk to Dennis about.

2 Q Was this a guess or did someone communicate  
3 to you from the IG's office what the subject matter  
4 of the questioning would be?

5 A I don't know.

6 Q Did you represent Mr. Foreman at this  
7 deposition?

8 A No.

9 Q Who did?

10 A I don't know. I think Treasury had an  
11 attorney there, I just don't remember who it was.

12 Q And were you the person representing Dennis  
13 in setting up the appointment for the Inspector  
14 General interview?

15 A I was not representing Dennis.

16 Q Were you the person who was acting on his  
17 behalf in arranging the interview?

18 A That's the same as representing him, and I  
19 was not doing that.

20 Q Well, did Dennis arrange his own  
21 appointment for the interview?

22 A I don't know.

1 Q Did you arrange the appointment for the  
2 interview?

3 A I doubt it.

4 Q How did you come to know he was going to be  
5 interviewed?

6 A I don't remember. I may have been told by  
7 Francine. I may have been told by Dennis.

8 Q Did you get involved in scheduling  
9 depositions for Treasury personnel for this Inspector  
10 General inquiry?

11 A Only in the sense that I got information  
12 about when various people were going to be scheduled  
13 for interviews, depositions, whatever.

14 Q Where did you get that from?

15 A Primarily from Bob McNamara; occasionally  
16 from private counsel.

17 Q And who did Mr. McNamara get it from?

18 A I don't know.

19 Q Did you deal with Francine Kerner in terms  
20 of getting information about when people were going  
21 to be interviewed?

22 A I wouldn't be surprised if I had.

1 Q Who participated in formulating questions  
2 for the Inspectors General personnel to ask  
3 witnesses?

4 A Not me.

5 Q Do you know anybody who did?

6 A No.

7 Q Do you know if Ms. --

8 A I assume Francine did but I don't know  
9 that.

10 Q Did Ms. Kerner ever talk to you about it?

11 A No.

12 Q Now, I want to show you what's been  
13 marked -- again it's not legible. I think it's --

14 A Actually -- wait a minute -- Francine did  
15 talk to me about the fact that she was rushed to  
16 prepare questions for some interview. I don't think  
17 she was asked to prepare questions, but she was  
18 preparing questions for some interview and she did,  
19 she got them prepared. And I think she was  
20 frustrated with the questions that were ultimately  
21 asked in some respect.

22 Q Did she say why she was frustrated?

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1 A She probably did. I think she just thought  
2 that the interview was not run well in the sense that  
3 they hadn't gotten relevant information, sort of the  
4 sense that I took away from that.

5 Q Let me show you what I think is -- I think  
6 it's Bates number 16139 for identification. It's a  
7 date book bearing the date July 4th and July 5th.

8 (Witness reviewed the document.)

9 A Okay.

10 Q Now, this is a document you prepared, or  
11 these are notes you prepared in May 1995?

12 A Right.

13 Q And --

14 A In or about.

15 Q And you attribute the events to which the  
16 notes refer as having occurred on or around July 5th,  
17 1994?

18 A Right.

19 Q Can you read this to us, please?

20 A Sure. White House agrees to provide to  
21 Inspectors General -- maybe I spoke too quickly. It  
22 looks like documents and witnesses, but I --

1 Inspectors General declined to provide transcripts  
2 during investigation to White House counsel.

3 Q Now, that's Inspectors -- Inspector General  
4 plural?

5 A I don't know. Too fine a point on, if it  
6 says IG little S, which usually means plural.  
7 Whether it meant plural or single here I don't know.

8 Q Is it your custom when you refer to IG  
9 little S to be referring to IG plural?

10 A It could also be IG possessive.

11 Q Well, I don't want to make a point -- spend  
12 too much time on grammar. It actually will turn out  
13 to be fairly important, Mr. Schmalzbach.

14 Are you going to tell us that you think you  
15 were using the S in the possessive in the sentence  
16 that says "IGs decline to provide transcripts to  
17 White House" --

18 A My guess is this is a characterization of  
19 some source document and frankly I wouldn't even try  
20 to answer that without looking at the source  
21 document.

22 Q In any sense, it says in your note IGs with

1 an S --

2 A My note's done a year or so after the fact.

3 Q -- which usually denotes plural; correct?

4 A No, I told you it denotes either possessive  
5 or plural. It depends on the context.

6 Q And you think it could mean, in the context  
7 of the sentence you wrote here, you meant it in the  
8 possessive sense?

9 A I don't know. Let me see the original  
10 document that I used to prepare this and I will be  
11 better able to answer the question.

12 Q What's the original document you used to  
13 prepare this?

14 A I don't know. Presumably something because  
15 I used -- this whole thing was prepared off of  
16 documents.

17 Q And it was prepared in May to be used in  
18 another investigation; right?

19 A Oh, I do know. There is a -- not that it's  
20 all that much more help, there is a time line that  
21 was prepared sometime in roughly September of 1994,  
22 after I think Senator Bond had started to ask

1 questions about providing the documents, and I think  
2 this comes off that time line.

3 Q Does that help you with what you meant when  
4 you said IGs?

5 A No. Seeing the time line might.

6 Q Let's continue on.

7 A Oh, wait a minute. Wait a minute. In  
8 context, this is probably -- you're right. It's  
9 probably plural.

10 Q Okay. Can we, let's continue on to the  
11 next line.

12 A I'm sorry. Where was I?

13 Q It starts "agenda."

14 A Okay. "Agenda looks like WPS" -- W-P-S is,  
15 it's word processing software. Obviously I was  
16 uncertain who had prepared it, as to whether I  
17 prepared it or McNamara or OGE or maybe someone  
18 else.

19 "Agenda says get White House documents  
20 give Treasury documents. Do we want to seek RTC  
21 comments. Note they produce with no consultation on  
22 Treasury equity documents. Looks like RTC already

1 produced to Hill. Letter to Codinha says Cutler  
2 first asked for transcripts this date."

3 And that's a reference -- presumably is a  
4 reference to the letter to Codinha, the Bates stamp  
5 number.

6 BY MR. CHERTOFF:

7 Q Now, on July 5th, was there a discussion or  
8 an event which you recall in which the White House  
9 agreed to provide the IGs with documents but the IGs  
10 declined to provide their transcripts back?

11 A Frankly, I don't think I knew about this  
12 until August when that time line was prepared to  
13 answer Senator Bond's questions.

14 Q Now, I want to show you what's been marked  
15 16006 for identification.

16 (Witness reviewed the document.)

17 A Uh-huh.

18 Q Is this a contemporaneous note in your  
19 handwriting in your spiral notebook?

20 A It indicates that it is.

21 Q Does it reflect a conversation with Edward  
22 Knight on July 5th?



1 A It my or it may indicate something I wanted  
2 to tell Ed Knight in a conversation.

3 Q And the reference to "IG will take  
4 deposition of White House witnesses," where did you  
5 learn that fact from?

6 A I don't remember.

7 Q Now, did you have responsibility for  
8 collecting the documents at Treasury which the  
9 Inspector General wanted?

10 A There was no collection. The Inspector  
11 General wanted the documents that had been furnished  
12 to the grand jury and he got them.

13 Q Was there any additional request for  
14 documents?

15 A Not that I remember.

16 Q Who is Mr. Kernan?

17 A He is a private counsel; I believe he was  
18 assisting Roger Altman.

19 Q Showing you 16008 for identification, does  
20 that constitute a note in your handwriting in your  
21 spiral notebook of a conversation with Mr. Kernan  
22 about an Inspector General interview that had been

1 scheduled for Mr. Altman for July 11th?

2 A It may.

3 Q Well, do you think it could be anything  
4 else?

5 A It may be something that I was  
6 communicating to him or something that he  
7 communicated to me.

8 Q Well, were you setting up appointments for  
9 the Inspector General with outside counsel?

10 A No.

11 Q Does it seem likely therefore that you  
12 would have called outside counsel for Mr. Altman to  
13 tell him when an interview with his own client was  
14 going to take place?

15 A It's conceivable.

16 Q Were you communicating with outside counsel  
17 for the Treasury witnesses concerning interviews?

18 A Concerning the scheduling of the  
19 interviews, yeah, from time to time.

20 Q Why?

21 A I don't know why, we just were. We were  
22 all under enormous time pressure as we were doing

1 this.

2 Q What was your interest in communicating  
3 with Mr. Altman's counsel about when his client was  
4 going to be interviewed?

5 A It could -- I don't remember specifically  
6 what it was. It could have been, for example, that  
7 the Senate or the House wanted to schedule interviews  
8 with Altman. Bob McNamara was getting involved in  
9 that. There may have been an issue of a conflict of  
10 when the Senate wanted to talk to him and when the  
11 House wanted to talk to him. I don't know.

12 Q Wasn't the Senate dealing with the  
13 privately represented Treasury officials through  
14 their private counsel?

15 A For the most part, but also, as I  
16 understood it, through Bob McNamara.

17 Q Did you have conversations with counsel for  
18 Mr. Altman and Ms. Hanson about the interviews that  
19 were conducted of Ms. Hanson and Mr. Altman?

20 A Ask the question again.

21 Q Did you talk to Mr. Altman and Ms. Hanson's  
22 lawyers about their clients interviews?

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1 A Which interviews?

2 Q That took place -- the IG interviews of --

3 A No.

4 Q -- Mr. Altman and Ms. Hanson?

5 A No.

6 Q You never discussed it?

7 A No.

8 Q Did you discuss with them their Senate  
9 interviews?

10 A Yes.

11 Q When?

12 A Sometime after the Senate interviews took  
13 place. I don't remember the dates.

14 Q Before the Secretary's deposition?

15 A Possibly. I don't remember.

16 Q Why did you talk to them about their  
17 clients' depositions in the nature?

18 A Because we were trying to gather  
19 information for the Secretary to fulfill his  
20 responsibilities.

21 Q In other words, you were trying to prepare  
22 the Secretary to testify?

1 A No, I answered the question. We were  
2 trying --

3 Q What responsibilities?

4 MS. STERGIS: Objection.

5 THE WITNESS: He has a responsibility to  
6 decide whether or not people who work at the Treasury  
7 Department continue to work there. That's part of  
8 what he had to do here. It is the most important  
9 part of what he had to do here and we were trying to  
10 help him with it.

11 BY MR. CHERTOFF:

12 Q But my question is given the fact that  
13 there were reports, reports due from OGE, there was  
14 going to be a Senate --

15 A The OGE report was not going to tell the  
16 Secretary -- it was going to tell him whether there  
17 was a violation of the standards of conduct. It was  
18 not going to decide for the Secretary whether or not  
19 this A, B, or C individual was a person who should  
20 continue to work at the department.

21 Q So your responsibility -- your reason for  
22 communicating with Mr. Altman's attorney about

1 Mr. Altman's Senate deposition was to carry out the  
2 responsibility of reporting to the Secretary on what  
3 disciplinary action should be taken against  
4 Mr. Altman?

5 A Ultimately, yes.

6 Q Why --

7 A As well as testifying about what action he  
8 had decided upon.

9 Q Why didn't you talk to Mr. Altman's  
10 attorney after the Inspector General's interview?

11 A I don't know, didn't.

12 Q It wasn't that important?

13 A I don't know the answer to why we didn't do  
14 it.

15 Q Did you talk to Ms. Hanson's attorney after  
16 the Senate deposition?

17 A We got a proffer from Harvey Pitt at some  
18 point. It was a pretty sketchy one. The exact  
19 timing of it, I don't remember, in terms of when the  
20 Senate interview took place.

21 Q Do you know whether it occurred -- did you  
22 take a proffer or get a report from Mr. Pitt after

- 1 the Inspector General's interview?
- 2 A Again, I don't remember the exact timing.
- 3 Q Did you keep an index of the documents the
- 4 White House produced to the Office of General
- 5 Counsel?
- 6 A I did not.
- 7 Q Did they produce an index?
- 8 A Oh, wait a minute. I and Steve McHale
- 9 created an index of all the documents that we had,
- 10 all the documents we had regardless of where they
- 11 came from.
- 12 Q Did the White House produce its own index
- 13 when they transmitted the documents?
- 14 A I have no idea. Not to me. Not to
- 15 Treasury. I thought you meant to the Senate. I
- 16 don't know what they did with the Senate.
- 17 Q Let me show you what have been marked as
- 18 16010 for identification and 11432 for
- 19 identification.
- 20 (Witness reviewed the document.)
- 21 A Yeah.
- 22 Q Are these the same page?

- 1 A I don't know.
- 2 Q Do you know why the same page would be
- 3 produced with two different sets of redactions?
- 4 A I didn't do this production.
- 5 Q Who did this production?
- 6 A I'm not --
- 7 MR. BUCKLES: If you want to go off the
- 8 record, I can answer some of that.
- 9 MR. CHERTOFF: All right. Let's go off the
- 10 record for a moment.
- 11 (Discussion off the record.)
- 12 BY MR. CHERTOFF:
- 13 Q Directing your attention to these two
- 14 pages, these are in your handwriting?
- 15 A Uh-huh.
- 16 Q And it's your contemporaneous notes in your
- 17 spiral notebook; correct?
- 18 A It's my notes in my spiral notebook.
- 19 Q Which are made at or around the time of the
- 20 date on the top of the page?
- 21 A Oh, yes.
- 22 Q Again, the "attention" indicates either --

1 indicates what?

2 A In this case, it would probably be Ellen --  
3 Ed Knight. I don't think I had any conversations  
4 with Ellen in July.

5 Q And what did you talk to Mr. Knight about  
6 on July 6th?

7 A 16010 looks like the kind of thing that I  
8 write down before I talk to someone so I remember  
9 what I need to tell them.

10 Q And what were you going to tell Mr. Knight?

11 A What it says here presumably.

12 Q Why did you want to tell Mr. Knight when  
13 the IG was going to be interviewing Mr. Altman?

14 A It was just information about the process  
15 that we were all immersed in.

16 Q And the second notation says "IG has not  
17 objected to White House counsel interviews of  
18 Treasury officials without regard to timing." What  
19 does that mean?

20 A Exactly what it says.

21 Q Does that mean they did not object to the  
22 White House counsel interviewing Treasury officials?

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1 A Right.

2 Q Now, the reference on 11432 to "exchange  
3 with White House," is that an exclamation mark after  
4 it?

5 A It's really hard to tell.

6 Q I guess I'm going to ask you to go back to  
7 the original.

8 MR. BUCKLES: What's the number on that  
9 one?

10 MR. CHERTOFF: 11432.

11 THE WITNESS: And the original of this is  
12 probably not going to help either. You have to go  
13 back to the notebook.

14 BY MR. CHERTOFF:

15 Q What does "exchange with White House" mean?

16 A Presumably -- well, it means exchanging  
17 something with the White House.

18 Q What?

19 A They give us something, we give them  
20 something.

21 Q What did you give them?

22 A I don't know. It might very well be



1 documents in this time frame.

2 Q What was the Cutler meeting?

3 A That I don't know, that I don't remember.

4 Q Now, I want to direct your attention to

5 16012.

6 (Witness reviewed the document.)

7 A Okay.

8 Q Again, is this in your handwriting, and are  
9 these notes you made in a spiral notebook you were  
10 keeping on a contemporaneous basis?

11 A They were -- it's from my notes in my  
12 spiral notebook.

13 Q Now, what does this page indicate?

14 A Seems to indicate to me Francine telling me  
15 about when various people are going to be interviewed  
16 by somebody.

17 Q By people in the Inspector General's  
18 investigation?

19 A I am not -- it's hard to tell. Don't know.

20 Q Well, who else was Francine -- what other  
21 interviews was Francine coordinating except those for  
22 the Inspector General?

1 A I don't know that she was coordinating any  
2 others but she had information about others, Senate,  
3 House.

4 Q Was part of her responsibility during this  
5 period of time to monitor the Senate and House?

6 A No.

7 Q So how did she have information about the  
8 Senate and House --

9 A She had it. I don't know how she had it.

10 Q Where was she getting it from?

11 A I don't know. Ask her.

12 Q Was she, to your knowledge, in  
13 communication with private attorneys for the Treasury  
14 officials?

15 A Presumably in scheduling IG interviews.

16 Q And is it your understanding she was  
17 collecting information about the Senate and House  
18 interview schedules --

19 A I don't know.

20 Q -- in that process?

21 Is this information information about the  
22 scheduling of Inspector General interviews of various

1 Treasury officials?

2 A I don't know for a fact. It may very well  
3 be.

4 Q The reference where it says "7/12, Tuesday,  
5 10:30 a.m. Josh," refers to Josh Steiner; correct?

6 A Uh-huh.

7 Q What does the notation next to it,  
8 "Weingarten meet with FK Monday 11:00 p.m." mean?

9 A It sounds like Francine was going to meet  
10 with Reed Weingarten.

11 Q Who is Reed Weingarten?

12 A I think he was Steiner's attorney.

13 Q What was the reason she was going to meet  
14 with him at 11:00 p.m.

15 A I have no idea.

16 Q Why did she tell you she did it?

17 A I have no idea.

18 Q Why is that something you would be  
19 interested in writing down?

20 A We were going through a fast-evolving  
21 process, under pressure by Fiske. Couldn't start  
22 until the beginning of July and we knew it was going

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1 to end at the end of July. We didn't have time to  
2 decide on a day-by-day basis, do we need this  
3 information, do we need that information. We were in  
4 an information-gathering mode. We didn't know what  
5 we were going to need.

6 Q And Francine was helping you with your  
7 information gathering mode?

8 A I don't know that she -- Francine sometimes  
9 had information. She was not helping us.

10 Q Was part of her function, as defined in the  
11 June 27th letter we had some testimony about earlier,  
12 to help Treasury general counsel in its  
13 information-gathering mode about the course of the  
14 Inspector General?

15 A I don't believe that memo addresses that  
16 issue.

17 Q You think it was consistent with that memo  
18 for her to be providing you with a list of upcoming  
19 interviews indicating the sequence in which they were  
20 going to occur?

21 A Sure.

22 Q And informing you about a meeting with Reed

1 Weingarten that she was having at 11:00 p.m. on  
2 Monday night?

3 A Sure.

4 Q Do you know what she was going to do at  
5 that meeting?

6 A No.

7 Q Do you know if she had questions that she  
8 had formulated for Mr. Steiner on Monday the 11th of  
9 July?

10 A I don't know that.

11 Q Do you know whether she passed that  
12 questions to Mr. Weingarten?

13 A I'm sorry. I don't know that she had  
14 formulated any questions. That was the way I  
15 answered the first question. To ask what she did  
16 with the questions after I had already answered  
17 that I didn't know she had questions seems to me to  
18 be a silly question.

19 Q Now ", Fred Coco/O'Rourke (both Treasury) on  
20 DF," what does that mean?

21 A Fred Coco and I think O'Rourke -- I'm sure  
22 Coco -- were investigators that the IG was using.

1 Q And when it says "on DF," does that mean  
2 that they were going to conduct a formal interview --

3 A That's what it suggests to me.

4 Q Does that help you to conclude that this  
5 page in fact indicates a schedule for Inspector  
6 General's interviews of Treasury officials?

7 A It is what it is.

8 Q You didn't think Fred Coco and O'Rourke  
9 were conducting interviews for the Senate, did you?

10 A No.

11 Q When it says here "Francine will E-mail  
12 Cottos on transcripts for Treasury counsel," what did  
13 that mean?

14 A I suspect it means that she was going to  
15 talk to Jim Cottos about giving transcripts to  
16 Treasury counsel.

17 Q And now, coming back to a document we put  
18 aside, 15794, is that your May entry about that --

19 A Yes, that's the same thing.

20 Q -- underlying note 16012. Now, --

21 MS. STERGIS: Excuse me. I'd like to read  
22 it.

1 MR. CHERTOFF: I thought I furnished it.  
2 We looked at this a couple of hours ago.

3 MS. STERGIS: I don't know that without  
4 looking at it.

5 BY MR. CHERTOFF:

6 Q On July 8th, you got transcripts of  
7 Inspectors General's interviews from Francine;  
8 correct?

9 A I don't know that.

10 Q Around July 8th?

11 A Sometime after July 8th.

12 Q Was she giving you the schedule of  
13 interviews so you could know when to expect the  
14 transcripts?

15 A I don't think so.

16 Q And when she gave you the interviews, did  
17 she tell you that Mr. Cottos had approved furnishing  
18 the interviews to you?

19 A I don't remember what she said when she  
20 gave them to me.

21 Q There came a time several days later --

22 A She asked for them back.

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1 Q Did she say why?

2 A She may have. I don't remember what she  
3 said. She wanted them back so I gave them back to  
4 her.

5 Q Did you ask her why?

6 A No.

7 Q I assume that you felt --

8 A I shouldn't answer that so quickly. I  
9 don't remember a conversation about the transcripts.

10 Q Were the transcripts something you had  
11 wanted to get to assist you in preparing the  
12 Secretary for his testimony?

13 A I've told you before why we wanted the  
14 transcripts. We needed information for a number of  
15 reasons in assisting the Secretary in fulfilling his  
16 responsibilities.

17 Q Were you therefore unhappy to have to  
18 return the transcripts?

19 A Yeah.

20 Q You don't remember what your discussion was  
21 with --

22 A No, I really don't.

1 Q Did she tell that you Mr. Cottos had said  
2 he didn't want transcripts to be transferred?

3 A I don't remember a discussion with Francine  
4 about it.

5 (Discussion off the record.)

6 BY MR. CHERTOFF:

7 Q At the time you got the transcripts on or  
8 around July 8th --

9 A Sometime after July 8th.

10 Q -- did Ms. Kerner place any restriction on  
11 use of the transcripts?

12 A Probably.

13 Q Did she do it in writing?

14 A No, I don't think so.

15 Q Well, do you know, do you remember what she  
16 told you, if anything?

17 A No, I would -- I would assume that we were  
18 only supposed to use them for our own purpose. For  
19 example, it would never have occurred to me to show  
20 those transcripts to private counsel without advanced  
21 approval from Francine.

22 Q What about to use them in preparing Dennis

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1 Foreman?

2 A I don't remember whether there was any  
3 specific discussion of using them in preparing Dennis  
4 or not.

5 Q I want to show you what's been marked as  
6 Exhibit 366 for identification from the Bates  
7 numbers.

8 (Witness reviewed the document.)

9 A Okay.

10 Q Have you ever seen this memorandum before?

11 A No.

12 Q Would you agree with me that July 18th,  
13 1994 was not the first time that the office of  
14 assistant general counsel for administration received  
15 a copy of the witness transcripts produced by the  
16 Inspector General's Office?

17 A It was not the first time we received  
18 copies of any transcripts. My recollection is that,  
19 when Francine gave them to me sometime after the 8th,  
20 there were four, five, six transcripts, and I gave  
21 those back. Obviously, at this stage of the game,  
22 there were a great deal more transcripts that the IG



1 had done a great deal more interviews.

2 Q At least some transcripts had been in your  
3 possession before July?

4 A Right, and returned.

5 Q I'm going to show you what's been marked as  
6 15989 for identification. Take a look at that for a  
7 minute.

8 (Witness reviewed the document.)

9 A Okay.

10 Q Do you recognize that document?

11 A Yep.

12 Q What is it?

13 A It is a printout -- well, it's a redacted  
14 printout from a to-do list that I prepared on July  
15 9th and probably updated from time to time thereafter  
16 without changing the date.

17 Q Now, there's a reference there to  
18 "cooperation. Beattie conversations." Were those  
19 conversations with Mr. Altman's attorney?

20 A That appears to be a question mark  
21 suggesting should there or will there be a  
22 conversation with Beattie.

1 Q Well, again, I'm going to have to ask to  
2 have a better copy produced of 15989.

3 It goes on to say "continued to permit IG  
4 demands to interfere with other Treasury witnesses?"  
5 What does that refer to?

6 A Presumably the IG was asking us not to do  
7 things that we needed to do in order to prepare  
8 Treasury witnesses to testify before Congress and we  
9 were acceding to that request.

10 Q And in fact, your next entry indicates why  
11 the IG didn't want to have one Treasury witness --  
12 let me withdraw the question.

13 The next entry indicates that the "IG  
14 doesn't want one Treasury witness to know what other  
15 Treasury witness will say"?

16 A Right.

17 Q Was it that possibility or was it that  
18 restriction which you regarded as an interference  
19 with the preparation of other Treasury witnesses?

20 A Yes.

21 Q Did Mr. Beattie complain to you about that?

22 A To me, no.

1 Q Was he complaining to somebody about it?

2 A He may have been.

3 Q Was he complaining to the Secretary about  
4 it?

5 A He may have been complaining to the  
6 Secretary. He may have been complaining to  
7 Mr. Knight. I don't know.

8 Q Did Mr. Knight tell you he had had  
9 conversations with Mr. Beattie?

10 A He may have.

11 Q Did Mr. Beattie tell -- to your knowledge,  
12 did Mr. Beattie tell Mr. Knight that the restriction  
13 on having one Treasury witness know what another one  
14 will say was interfering with witness preparation?

15 A Oh, I have no idea.

16 Q Now then, you go on to say "the specifics:  
17 Debrief witnesses after IG testimony. Foreman  
18 already. Hanson deposition today." What do you mean  
19 by the specifics?

20 A Presumably just a more -- I mean I don't  
21 know what I meant at the time. Looking back at it  
22 now, it looks like this was a more detailed

1 discussion of the general area discussed in the rest  
2 of this document, or actually, if you follow the  
3 bullets back to cooperation -- I don't know. It's  
4 not -- it probably was never a very helpful, never a  
5 very revealing thing to write down.

6 Q Was it your understanding, at least as of  
7 this time, July 9th, that the Inspector General  
8 specifically did not want to have any Treasury  
9 witnesses knowing what another Treasury witness would  
10 say?

11 A It appears to have been, yeah.

12 Q Now then, under the specifics, as you go  
13 down to the bottom, it says "share IG transcripts  
14 once received/IG finished"?

15 A Right.

16 Q Share with whom?

17 A Presumably with counsel to the witnesses,  
18 the witnesses or their counsel.

19 Q Did you have discussions with Mr. Knight  
20 about sharing the Inspector General transcripts with  
21 the witnesses?

22 A Sure.

1 Q Did he want you to do that?

2 A He wanted to know whether it was the right  
3 thing to do.

4 Q What did you say?

5 A I told him that it was.

6 Q Now then, it goes on to say "how will we  
7 know whether IG and White House reports are in  
8 agreement?"

9 A Right.

10 Q What did you mean by that?

11 A Whether they were finding the same facts or  
12 different facts.

13 Q And it says "no process in place per FK."  
14 What does that mean?

15 A Francine. It appears that I'd asked  
16 Francine how she would know and she told me there was  
17 no process in place.

18 Q Finally on the next page, it says "Treasury  
19 IG wants to give Secretary a copy of their report as  
20 they give it to OGE." What does that mean?

21 A It sounds to me like the Treasury IG wants  
22 to give the Secretary a copy of the report as he

1 gives it to OGE.

2 Q Did that indicate to you that it was a  
3 desire of the Inspector General of Treasury not to  
4 give the Secretary an advance copy of the report, but  
5 rather to give their report to the Treasury Secretary  
6 only at the same time that it was being given to OGE?

7 A No.

8 Q What does it indicate to you?

9 A It indicates to me that the Treasury IG  
10 wanted to give the Secretary a copy of the report as  
11 they gave it to OGE.

12 Q Does it say that the Secretary wanted --  
13 that the Treasury IG wanted to give it to the  
14 Secretary before they gave it to OGE?

15 A It does not say that.

16 Q Did the Treasury IG ever, to your  
17 knowledge, ask to have the Office of General Counsel  
18 review their report and edit it before it went to  
19 OGE?

20 A No.

21 Q Did the Secretary's office ever ask you to  
22 review and edit the IG report before it went to OGE?

- 1 A No.
- 2 Q Did Mr. Knight?
- 3 A No.
- 4 Q Did you in fact review and edit make some
- 5 editorial suggestions on the draft report?
- 6 A Did I?
- 7 Q Yes.
- 8 A No.
- 9 MS. STERGIS: When?
- 10 BY MR. CHERTOFF:
- 11 Q Before it went to OGE?
- 12 A No.
- 13 Q No?
- 14 A No.
- 15 Q Did anybody in the Office of General
- 16 Counsel do it?
- 17 A Before it went to OGE?
- 18 Q Yes, the draft report before it went to
- 19 OGE.
- 20 A No.
- 21 Q No one in the Treasury general counsel's
- 22 office did?

- 1 A I'm trying to remember the timing.
- 2 Before -- when did it go to OGE?
- 3 Q July 29th.
- 4 MR. PORTNOY: That's the final report. You
- 5 are asking about the draft report and the final
- 6 report in the same question. Specify what you mean.
- 7 BY MR. CHERTOFF:
- 8 Q I'm asking whether anyone edited the draft
- 9 report before it was finalized and sent to OGE.
- 10 A First of all, I believe that OGE got a copy
- 11 of the draft report on the 22nd before they get got
- 12 the final report on, whenever it was, the 30th, the
- 13 29th.
- 14 Second of all, as far as I know, no one
- 15 ever edited the draft of the IG findings or whatever
- 16 you call the chronology. My staff did look at the
- 17 transcripts and the chronology and identify instances
- 18 in which they were inconsistent with each other.
- 19 Q Well, did you also identify instances in
- 20 which you wanted to suggest that the IG change their
- 21 chronology or their report to reflect things that you
- 22 felt should be reflected?

1 A Only when there were things in the  
2 transcripts that they hadn't -- that seemed relevant  
3 that they hadn't included.

4 Q And was there a Secretary's review team  
5 that was designated to review the draft report and  
6 make suggestions?

7 A Yeah.

8 Q Who was on it?

9 A Steve McHale and me.  
10 (Discussion off the record.)

11 BY MR. CHERTOFF:

12 Q When did your office begin the process of  
13 reviewing the draft report or any draft report by the  
14 Inspectors General with a view to making suggestions?

15 A We reviewed it as soon as we got it on the  
16 22nd.

17 Q And when did you furnish your comments to  
18 the Inspectors General?

19 A That I don't know.

20 Q I want to -- were you involved in the  
21 preparation of answers to questions that were  
22 propounded by Senator Bond after the hearings in July

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1 and early August of 1994?

2 A Yeah.

3 Q There's a question -- that is question  
4 number 6 -- that begins "did any Treasury personnel  
5 consult with RTC personnel about the propriety of  
6 releasing the Treasury RTC depositions before the  
7 Treasury RTC depositions were released to the White  
8 House? If not why not?"

9 And the answer reads as follows: "The  
10 first disclosure of transcripts to White House  
11 personnel was made jointly by the Treasury and RTC  
12 Inspectors General offices. On July 18th, 1994 at  
13 the request of the Office of Government Ethics  
14 witnesses including White House witnesses who had  
15 been interviewed by the OIGs were provided with  
16 copies of their own interviews for transcripts  
17 verification." This, by the way, is on page 200 of  
18 volume IV of the hearings.

19 The second paragraph goes on to say as  
20 follows: "The Treasury investigation to  
21 Treasury-White House contacts regarding the collapse  
22 of Madison Guaranty Savings & Loan was initiated as



1 an outgrowth of the Secretary's request to the Office  
2 of Government Ethics for an opinion on the propriety  
3 of those contacts. At the request of OGE, which has  
4 no investigative staff or expertise the Office of the  
5 Inspector General at Treasury, assisted by the Office  
6 of the Inspector General at the Resolution Trust  
7 Corporation, led the investigation into the substance  
8 and purpose of the contacts, interviewing 25 current  
9 and former federal employees during July 1994. On  
10 July 22, 1994, after the OIGs completed all the  
11 interviews they planned to conduct, Treasury's OIG  
12 provided a draft of the report to the Office of  
13 Government Ethics and the Secretary. The draft  
14 included copies of witness interview transcripts."

15 Now, Mr. Schmalzbach, it's a fact that  
16 copies of witness interview transcripts were  
17 furnished to main Treasury, the Office of General  
18 Counsel before July 22nd, 1994; correct?

19 A Yes.

20 Q You got them around July 8th and then they  
21 were taken back; correct?

22 A Right.

1 Q And then you got them again on July 18th?

2 A I think that's right. I think we got them  
3 again on the 18th.

4 MS. STERGIS: By "we," you mean witness's  
5 counsel or Treasury IG?

6 BY MR. CHERTOFF:

7 Q You, meaning Mr. Schmalzbach.

8 A My staff and I, yes.

9 Q Your staff and you. So you had copies of  
10 the witness interview transcripts before July 22,  
11 1994?

12 A Right.

13 Q In fact -- isn't it, in fact, true that  
14 because of that when the draft report was submitted  
15 to you on the 22nd of July they didn't append  
16 transcripts because you had them already?

17 A I don't know.

18 Q Is there a reason you did not disclose in  
19 this answer that transcripts, draft transcripts had  
20 been provided to your office before July 22nd?

21 MR. PORTNOY: Draft transcripts?  
22 Transcripts?

1 BY MR. CHERTOFF:

2 Q I'm sorry. I'll withdraw the question and  
3 say it again.

4 Is there a reason you did not disclose in  
5 this answer that transcripts of witness interviews by  
6 the Inspectors General had been furnished to your  
7 office before July 22nd?

8 A Not that I'm aware of.

9 Q Did you think about disclosing that?

10 A I didn't write this answer, by the way.

11 Q Did you see the answer?

12 A Yes.

13 Q When you saw the answer, did you --

14 A It did not leap into my mind that we  
15 weren't talking about having received the transcripts  
16 on the 18th of July.

17 Q Did it seem to you that the impression  
18 being conveyed was that July 22nd, 1994 was the first  
19 time that copies of witness interview transcripts  
20 were furnished to the Secretary of the Treasury?

21 A I don't recall having that impression. And  
22 frankly, having read it a number of times recently,

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1 that was not what leapt into my mind.

2 Q So you don't think that this answer conveys  
3 the impression that it's only on July 22nd that  
4 information about the investigation in terms of the  
5 draft report and the transcripts are being furnished  
6 to the Secretary?

7 A That was not the impression that -- in my  
8 readings of it I have never read it that way.

9 Q In any event, what is quite clear is that  
10 before July 22nd, copies of witness interview  
11 transcripts were furnished to the Office of General  
12 Counsel?

13 A Right.

14 (Discussion off the record.)

15 MR. PORTNOY: I'm supposed to state an  
16 objection on the record to handing off counsel in the  
17 middle of the deposition.

18 MR. CHERTOFF: What's the basis?

19 MR. PORTNOY: I've been advised that there  
20 was an understanding between the majority and  
21 minority staff that depositions would be conducted by  
22 single counsel.

1 MR. CHERTOFF: I think the understanding we  
2 had, for the record, is normally we will do so. I,  
3 unfortunately, have a pressing engagement. I'd like  
4 to accommodate the witness and get the witness done  
5 today, which I think we can do. I mean I guess if  
6 counsel insists I could say that I'm unavailable  
7 we'll have to call the witness back. I think it  
8 would be foolish in the extreme to do that. I mean,  
9 if there is some prejudice --

10 MR. PORTNOY: Well, two responses. First,  
11 it's not my understanding that we've heretofore  
12 rescheduled depositions because an individual lawyer  
13 isn't available. It's been my understanding from  
14 your office that meetings and depositions are  
15 scheduled and can be covered by whichever lawyer is  
16 available. But secondly, it's not my intent that we  
17 should reschedule this deposition and that we should  
18 come back another day. I am simply making my  
19 objection for the record.

20 MR. CHERTOFF: For the record, we've  
21 honored in the past requests in some instances to  
22 have depositions scheduled to accommodate

1 Mr. Ben-Veniste, and I would hope that when there is  
2 a personal reason -- I have to do something -- he  
3 would accommodate me likewise.

4 In any event, is there an objection from  
5 the witness to have Mr. O'Callaghan proceed?

6 THE WITNESS: No.

7 (Whereupon, at 2:25 p.m., the deposition  
8 was recessed, to be reconvened at 3:10 p.m. this same  
9 day.)

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## AFTERNOON SESSION (3:12 p.m.)

Whereupon,

KENNETH R. SCHMALZBACH

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

## EXAMINATION (Continued)

BY MR. O'CALLAGHAN:

Q Back on the record. Mr. Schmalzbach, I'd like to show you document Bates stamp 16013 and hand it to you and your counsel. Take a moment to review it and let me know when you're finished.

(Witness reviewed the document.)

A Okay.

Q Have you had a chance to review it?

A Yep.

Q Is this a copy of a page from the spiral bound notebook with your handwriting on it --

A Yes.

Q -- that we've been referring to earlier? At the top of the left-hand corner of the page it reads initials DF, 7/11/94. What does that refer to?

A I assume it refers to Dennis Foreman.

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Q Does that reference a conversation held with Mr. Foreman?

A It may very well do that. I don't remember this conversation with Mr. Foreman.

Q The date is 7/11/94. Could you read the first entry there?

A "Ben IG interview last Friday."

Q What does that refer to?

A Presumably it refers to an interview with -- Ben Nye is the only Ben I can think of -- the preceding Friday.

Q Do you recall ever having a conversation with Mr. Foreman regarding an interview with Ben Nye?

A No, as I said, I don't remember this conversation. It appears to me that there was a conversation, but I just don't remember having it.

Q Could you read the next line?

A "Ethics briefing?"

Q What does that refer to?

A I don't know.

Q Do me a favor if you could read the whole entry and we'll go through it line by line.

1 A "Ethics briefing?" Then "asked specific  
2 standards of conduct" -- "specific section," looks  
3 like "standards of conduct. No briefings on  
4 nonpublic information handling."

5 Q Okay. Just dealing with that, what you  
6 just read to me, what does that refer to?

7 A A, I don't know. B, it looks like those  
8 were questions asked Ben at his IG interview.

9 Q Did you ever discuss with anyone what  
10 questions were asked Mr. Nye during his IG interview?

11 A I don't know whether I did or not. This  
12 suggests that I did.

13 Q Did you discuss with any of the people who  
14 were interviewed by the IG's office questions that  
15 they were asked in the course of the interviews?

16 A Yes, I probably talked to Dennis Foreman  
17 about what he had been asked.

18 Q When did that conversation take place?

19 A I don't know. After the interview. I  
20 really don't know. I have a vague recollection of  
21 having talked to Dennis about it. I just -- I don't  
22 remember the substance. At this stage, I don't even

1 remember what Dennis was asked.

2 Q How did the subject come up in the  
3 conversation?

4 A Well, how did the -- which conversations  
5 are you referring to?

6 Q With Mr. Foreman, regarding the questions  
7 he was asked.

8 A I don't know. I don't remember. As to  
9 this, there is something important you have to  
10 remember about this. Dennis is the head of the  
11 department's ethics program -- was the head of the  
12 department's ethics program. So if there were  
13 concerns about or criticisms of the department's  
14 ethics program, it is he who is responsible for  
15 assessing those criticisms and deciding what, if any,  
16 reaction to them is important.

17 Q Well, did the Secretary ask Mr. Foreman to  
18 look into the White House-Treasury contacts for a  
19 possible ethic violations?

20 A I don't believe so. Not that I ever heard.

21 Q So was Mr. Foreman conducting an  
22 investigation into the White House-Treasury contacts



1 during this time period?

2 A No. And in fact, these questions that are  
3 related in these notes have nothing to do with the  
4 Treasury-White House contacts. They appear to be  
5 questions that Ben was asked about the ethics  
6 training that he got at Treasury.

7 Q And did you ever reveal to Mr. Foreman that  
8 you'd heard people were asked questions about their  
9 ethics training at Treasury during the course of the  
10 interviews?

11 A This note suggests that I did.

12 Q Do you know why you would have related that  
13 information to Mr. Foreman?

14 A Sure, because Dennis is the head of the  
15 ethics program and if there is something wrong with  
16 it he's responsible for fixing it.

17 Q Did he request that you provide him with  
18 this information?

19 A I don't know.

20 Q Did he make any inquiries as to whether  
21 there were questions being asked during the IG  
22 interviews regarding the ethics program at Treasury?

1 A I'm sorry. Say it again.

2 Q Did he --

3 A "He" who?

4 Q Mr. Foreman, make any inquiries as to  
5 whether there were questions being asked during the  
6 course of the IG interviews with regard to the  
7 department's --

8 A I don't remember that as a specific  
9 question from Dennis.

10 Q Do you remember it as a general question?

11 A No. I do -- I mean Dennis -- maybe a  
12 little bit of organizational structure will help  
13 here. Dennis is the deputy general counsel to whom I  
14 report. He is the designated agency ethics official  
15 which, under OGE regulations, is head of the ethics  
16 program for the department. The alternate designated  
17 ethics official is a senior attorney named Hank Booth  
18 who reports to Steve McHale who reports to me. It is  
19 part of my office's responsibilities to assist the  
20 designated agency ethics official in operating the  
21 department's ethics program.

22 Q Okay. Why did the Secretary ask

1 Mr. Foreman to conduct a review of the possible  
2 ethical conduct violations that were represented by  
3 the White House Treasury contacts?

4 A Why didn't he?

5 Q Yes.

6 A You'd have to ask the Secretary that.

7 Q Would he have done that in a normal course?

8 A I don't know.

9 Q What would Mr. Foreman's responsibilities  
10 be as the designated ethics officer?

11 A To administer the financial disclosure  
12 filing system for senior officials, to provide advice  
13 to the personnel department regarding the financial  
14 disclosure system for less senior officials, to  
15 provide ethics advice, to either upon request and in  
16 anticipation of needs to everybody within the  
17 department and from time to time to actually to  
18 advise the Inspector General when they were  
19 conducting an ethics investigation as to whether or  
20 not something was or was not a violation of an ethics  
21 law or regulation. I just remembered something.

22 Q Have you ever heard why Mr. Foreman wasn't

---

1 asked to look into the possible ethical violations  
2 involved with the White House-Treasury contacts?

3 A No, not that I recall.

4 Q Did the Secretary state or have you ever  
5 learned -- let me rephrase the question.

6 A Let me hasten to add something. Dennis has  
7 no investigative capacity.

8 Q But as designated ethics officer is it one  
9 of his responsibilities to advise the department on  
10 possible ethical violations that occur?

11 A Yes.

12 Q And with regard to the White House Treasury  
13 contacts, was his advice solicited with regard to the  
14 White House Treasury contacts?

15 A Well, my understanding -- and Dennis has  
16 testified to this before the Senate -- is that Jean  
17 Hanson asked Dennis for ethics advice before she and,  
18 as it turns out, Roger Altman went over to meet with  
19 people in the White House to discuss whatever it was  
20 they were going to discuss in February of '94. I  
21 suppose that's responsive to your question.

22 Q I'm referring specifically to the -- was he

1 asked for advice subsequent to that, whether he was  
2 asked for advice from the Secretary or anyone at the  
3 Treasury Department, with regard to whether there are  
4 any ethical violations that were committed?

5 A He may have been.

6 Q Okay. Was he ever asked to do that in an  
7 official capacity?

8 A I don't know.

9 Q Did the Secretary ever articulate a  
10 rationale for asking the Office of Government Ethics  
11 to conduct or to render ethical opinion to the  
12 Treasury Department rather than have --

13 A Well, A, not directly to me, but B, it  
14 seems to me that he made public statements at the  
15 time to the effect that those were the ethics  
16 experts. There had been ethics violations alleged,  
17 OGE was the ethics expert, so we went to him for  
18 advice.

19 Q Had he ever done that in the past?

20 A I don't know whether there was a similar  
21 circumstance in the past. In fact, there wasn't that  
22 I was aware of.

1 Q So was this an unusual request by the  
2 Secretary?

3 A It was an unusual set of circumstances to  
4 which the Secretary reacted appropriately.

5 Q If there are ethical violations committed  
6 by the Department of Treasury personnel, does the  
7 designated ethics -- was it -- did you say officer?

8 A Designated agency ethics official. DAEO  
9 for short.

10 Q Was it normally the DAEO's responsibility  
11 to render advice to the department when there are  
12 ethics violations that occur?

13 A There is a whole structure throughout the  
14 department of ethics advisors, but it is the --

15 Q Specifically with regard to the DAEO, would  
16 that normally be part of the responsibility?

17 A Depends on where in the organization it  
18 happens. If there is some problem with the cleaning  
19 crew in an IRS district office --

20 Q If it happened in the Office of General  
21 Counsel?

22 A Okay. Now ask the question again, is what

1 his responsibility?

2 Q Was it normally the responsibility of the  
3 DAEO to render an opinion with regard to whether  
4 ethic violations were being committed if the conduct  
5 in question occurred with people within the Office of  
6 the General Counsel?

7 A Sure. Once someone brings facts to the  
8 attention of the DAEO it's his obligation to give  
9 advice.

10 Q Was there a specific reason given why  
11 Mr. Foreman wasn't asked by the Secretary to render  
12 advice in this situation?

13 A I don't know. Certainly not to me.

14 Q Do you have any knowledge of when that was  
15 made?

16 A No.

17 Q Okay. I'd like to direct your attention to  
18 the next line of the 16013. Could you read that line  
19 to me?

20 A "OGE report criticize agency ethics  
21 training. Ask Hank about training."

22 Q What does that refer to?

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1 A I honestly do not remember. And at the end  
2 of the day the OGE report I don't recall being  
3 critical of Treasury ethics training, although they  
4 may have been and there was -- it's sort of a silly  
5 issue ultimately, but there was an issue that OGE had  
6 raised about people not understanding the concept of  
7 recusal, and I mean I certainly well understand the  
8 concept of recusal. It was not clear to me from  
9 OGE's report what they were being critical of.  
10 Whether this had anything to do with that, I don't  
11 know, I just don't know.

12 Q Had OGE produced any drafts of the report  
13 that was done with regard to the White House Treasury  
14 contacts by July 11th, 1994?

15 A I don't know what OGE produced. I have  
16 never seen a draft of the OGE report.

17 Q Okay. What was your reference for making  
18 this entry?

19 A I don't know. It may have been a concern  
20 that we had that maybe OGE would be critical of us.  
21 I just don't know. Just trying to figure out what  
22 they might do or hypothesize what they might do, we

1 might have hypothesized that. I don't recall  
2 having -- aside from whatever I inferred from having  
3 been asked about what was the authority of Treasury  
4 people to work on RTC matters, I had no information.  
5 I'm not even sure that was information about the OGE  
6 report, but I had nothing about it.

7 Q There is a star next to that entry. Does  
8 that signify anything?

9 A Yes. Do something.

10 Q That means do something?

11 A Right.

12 Q And what does that indicate to you that you  
13 were saying to do?

14 A Ask Hank about training.

15 Q Could you read the last line?

16 A Yeah, "get Walsh's report from Government  
17 Printing Office." \$60, by the way, presumably was  
18 the cost of Walsh's report.

19 Q What does Walsh's report refer to?

20 A The only Walsh that I know of was an  
21 independent counsel I think on Iran-contra.

22 Whether -- and I have no idea why I or someone else

1 thought it was a good idea to get Walsh's report from  
2 the Government Printing Office.

3 Q Did you or anyone else from your office  
4 ever get a report like that?

5 A Not that I recall.

6 Q Are you aware of whether OGE began drafting  
7 portions of its report or analysis at any time before  
8 it received the IG's draft report?

9 A I don't know.

10 Q Have you ever heard that?

11 A Not that I recall.

12 Q You don't recall hearing that?

13 A No.

14 Q I show you a document bears the Bates  
15 16014. Take a moment to review that.

16 (Witness reviewed the document.)

17 Have you had a chance to review that?

18 A Uh-huh.

19 MR. O'CALLAGHAN: Counsel, have you had a  
20 chance?

21 MS. STERGIS: Yes.

22 BY MR. O'CALLAGHAN:



1 Q Is this a page from your spiral notebook  
2 that we've been referring to?

3 A It is a page from the spiral notebook that  
4 I keep.

5 Q And it's your handwriting that appears  
6 there?

7 A Right.

8 Q What appears in the top left-hand corner of  
9 the document?

10 A The initials DF -- again, presumably Dennis  
11 Foreman -- July 11, '94.

12 Q What does this entry represent?

13 A I assume that it means that the Inspector  
14 General had completed his interviews of all except  
15 Jack DeVore.

16 Q Does this reflect a conversation that you  
17 had with Mr. Foreman?

18 A It would appear to.

19 Q Would that have been a telephone  
20 conversation or face-to-face conversation?

21 A No, it would more likely be a telephone  
22 conversation. I don't -- while it is not

1 inconceivable that I would have taken this kind of  
2 note face to face, it's far more likely to be a  
3 telephone conversation.

4 Q And why would you be or did you inform  
5 Mr. Foreman that IG was done with all but DeVore?

6 A This note suggests that I did.

7 Q Is there a chance that he was instructing  
8 you or providing you with that information?

9 A It's possible.

10 Q Do you have a recollection one way or the  
11 other?

12 A No.

13 Q Did you generally report to Mr. Foreman  
14 what the status of the IG interview schedule was?

15 A No, not generally.

16 Q Do you have a specific recollection of any  
17 times that you did do that?

18 A No, I don't have a -- obviously we've  
19 looked at a number of instances that suggest that I  
20 did, but I don't specifically recall doing that. I  
21 basically wasn't working with Dennis on this.

22 Q Was anyone else keeping Mr. Foreman

1 informed about the progress of the IG investigation?

2 A I don't know.

3 Q Have you ever learned that?

4 A No.

5 Q Have you ever been told that?

6 A No.

7 Q Where is Mr. Foreman's office at Treasury  
8 with relation to your office physically?

9 A I am on the first floor on the west side of  
10 the building, about halfway between the north and the  
11 south end of the building. Dennis's office was on  
12 the third floor on the east side of the building in  
13 the south corner, the southeast corner of the  
14 building.

15 Q And how about where was your office's  
16 physical location in reference to Ms. Hanson's  
17 office?

18 A Dennis and Ms. Hanson were in the same  
19 suite.

20 Q So she was in the same area of the  
21 building?

22 A Right.

1 Q How close are their offices, where are they  
2 situated?

3 A They were next to each other. In fact,  
4 there is an office -- there's a door that goes from  
5 Jean's office to Dennis's office and vice versa.

6 Q Adjoins the two rooms?

7 A Yeah.

8 Q I'd like to show you a document Bates  
9 stamped 16015. Let me know when you've had a chance  
10 to review it.

11 (Witness reviewed the document.)

12 A Okay.

13 Q This is a page out of your spiral notebook?

14 A Right.

15 Q Is it your handwriting that appears on this  
16 document?

17 A Yes.

18 Q Okay. Let's go through what appears here  
19 in the document. What's the -- what's written on the  
20 first two lines?

21 A EK, presumably Ed Knight.

22 Q And then?

1 A July 12th, 1994.

2 Q Did you have a meeting with Mr. Knight on  
3 July 12th, 1994?

4 A I probably did. Whether this has anything  
5 to do with a meeting with -- I mean we were meeting  
6 essentially every day. I don't think this is a -- it  
7 could be. It could be a meeting. It could be a  
8 telephone conversation. It could be me preparing to  
9 do a telephone conversation that never happened.

10 Q Okay. Could you read the next I guess two  
11 lines?

12 A "Josh, IG counsel this morning."

13 Q What does that refer to?

14 A Presumably it means that the IG was going  
15 to interview Josh that morning.

16 Q Was this information you were relating to  
17 Mr. Knight?

18 A It was either information I was relating to  
19 Mr. Knight or information Mr. Knight was relating to  
20 me.

21 Q Do you recall Mr. Knight ever relating  
22 information to you with regard to interviews being

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1 conducted by the Treasury IG's office?

2 A I don't specifically recall it. It  
3 wouldn't surprise me at all if it happened, but I  
4 don't remember any specific instance in which that  
5 happened.

6 MS. STERGIS: What do you mean by  
7 "information"?

8 BY MR. O'CALLAGHAN:

9 Q Information regarding the interviews  
10 scheduled or the occurrence of them, just anything  
11 dealing with them?

12 A Any conversations we would have had would  
13 have related exclusively to when they were going to  
14 happen.

15 Q Okay. During this time period, who was  
16 generally more knowledgeable about the schedule of  
17 the witnesses, you or Mr. Knight?

18 A Me.

19 Q And how about with regard to Mr. Foreman?

20 A Me.

21 Q If I could direct your attention to the  
22 next part of written text that's not blocked out, if

1 you could make your best effort to read that to me?

2 A Sure. "Also IG interview of Secretary --  
3 can Treasury attorneys represent?"

4 Q I'll stop you right there. What does that  
5 refer to?

6 A It's a question of whether the Treasury's  
7 attorneys could show up at the interview of the IG's  
8 interview of the Secretary.

9 Q And was that an issue of contention at the  
10 time?

11 A This suggests that it was.

12 Q Do you have a recollection --

13 A Well, it was an unresolved issue.

14 Q Unresolved as between who?

15 A Everyone that needed to be involved in it.

16 It just wasn't decided yet. This was obviously  
17 something that wasn't decided yet.

18 Q Had the subject been broached with the  
19 Inspector General's office?

20 A It may very well have been. I presume that  
21 it was.

22 Q Okay. Could you read the next line, the

1 remainder of the text?

2 A "Need to revisit with Inspector General.  
3 Wasn't permitted for other witnesses."

4 Q Okay. What does that refer to?

5 A Obviously there had been discussions about  
6 the issue of Treasury attorneys attending the IG's  
7 interviews of Treasury witnesses. This suggests, and  
8 in fact, it's my understanding that it generally was  
9 not permitted. However, those other witnesses had  
10 private counsel and the Secretary did not. So we  
11 needed to revisit it with respect to the Secretary.

12 Q Was that ever resolved?

13 A I believe it was.

14 Q And how was it resolved?

15 A I believe Treasury attorneys were permitted  
16 to attend.

17 Q And which attorneys attended the interview  
18 with Mr. Bentsen?

19 A I don't know that for a fact.

20 Q Do you have an idea?

21 A I expect it was Bob McNamara.

22 Q Was he accompanied by more than one

- 1 attorney?
- 2 A He could have been.
- 3 Q Did Mr. Knight accompany him?
- 4 A I don't know that.
- 5 Q Did Treasury attorneys accompany any of the
- 6 other Treasury witnesses?
- 7 A To the -- I don't remember whether they
- 8 accompanied Dennis Foreman or not. I don't even
- 9 remember whether the IG talked to Joan Logue-Kinder
- 10 or Frank Newman or not. I guess they did talk to Ben
- 11 Nye. I don't know whether a Treasury witness
- 12 accompanied them.
- 13 Q Counsel?
- 14 A I personally did not accompany any witness
- 15 to any interview anywhere.
- 16 Q Did Mr. McNamara accompany witnesses?
- 17 A I believe he attended Senate depositions.
- 18 I know for a fact that, when I was interviewed by the
- 19 House, he was with me.
- 20 Q Okay. How about Mr. Knight?
- 21 A I --
- 22 MR. PORTNOY: As lawyer or witness?

- 1 BY MR. O'CALLAGHAN:
- 2 Q As counsel?
- 3 A I don't know that Ed did. I don't know
- 4 whether Ed went to the Secretary's interview, and I
- 5 don't believe that Ed went to anybody else's
- 6 interview.
- 7 Q And how about Mr. McHale?
- 8 A No.
- 9 Q I'd like to show you a document Bates
- 10 stamped 16010.
- 11 A My favorite document, by the way.
- 12 Q Let me know when you've had a chance to
- 13 review it.
- 14 (Witness reviewed the document.)
- 15 A Okay.
- 16 Q Is this a page from your spiral notebook?
- 17 A Yeah.
- 18 MR. PORTNOY: Is that 010?
- 19 THE WITNESS: I think it's 01601 something.
- 20 MR. PORTNOY: It's 16, not 10.
- 21 BY MR. O'CALLAGHAN:
- 22 Q I'm sorry. So it's 16.



1 MR. PORTNOY: I thought that's what you  
2 might be referring to.

3 BY MR. O'CALLAGHAN:

4 Q Is this your writing that appears on the  
5 page?

6 A Yeah.

7 Q Were these notes taken on the 12th of July?

8 A I don't specifically remember this  
9 conversation, but I'm almost confident that this is a  
10 note that I wrote down as Jane Sherbourne was talking  
11 to me.

12 Q So this reflects a conversation you had  
13 with Ms. Sherbourne?

14 A Almost certainly.

15 Q Okay. And what does this document  
16 reference?

17 A "Codinha losing touch with reality. Wants  
18 IG to defer completing Hanson deposition until Senate  
19 Banking Committee does theirs. Now" something -- and  
20 I don't know which that was, the IG's or the  
21 Senate's -- "was now scheduled for Thursday."

22 Q And is this information that Ms. Sherbourne

1 departed to you?

2 A Almost certainly.

3 Q And how did this phone call come about?

4 A I don't know. We were all -- in July we  
5 were all crushed to do a lot of things, and we  
6 talked.

7 Q Why did Ms. Sherbourne call you about  
8 completing Ms. Hanson's deposition?

9 A Why didn't she?

10 Q Why did she?

11 A I don't know. I don't know that that was  
12 the reason she called in the first place. That was  
13 something -- it appears to be something she told me  
14 in the course of this conversation.

15 Q Do you know how she knew that Mr. Codinha  
16 wanted the IG to defer completing Hanson deposition?

17 A Whether I knew at the time, I don't have a  
18 clue now.

19 Q But now you don't know?

20 A No.

21 Q Did you discuss witness scheduling with  
22 Ms. Sherbourne during the time period?

- 1 A Uh-huh.
- 2 Q How often would you talk to her about  
3 scheduling?
- 4 A From time to time.
- 5 Q For what purpose?
- 6 A Because it was -- we were all in an  
7 enterprise that we needed to wrap up by the end of  
8 July or thereabouts, whenever the Senate, I guess, or  
9 the House was going to start. I guess July 26th was  
10 when the House planned to start and we all had a lot  
11 of things to do in a short period of time and  
12 information about scheduling was helpful.
- 13 Q During July of '94, how many times a day  
14 would you say you spoke with Ms. Sherbourne?
- 15 A I don't know. I probably tried once a  
16 day. Whether I succeeded every day, I don't know.
- 17 Q I'd like to have you take a look at a  
18 document 11433.
- 19 (Witness reviewed the document.)
- 20 A Yes.
- 21 Q Is this a page from your spiral notebook?
- 22 A Uh-huh.

- 1 Q Is it your handwriting that appears on it?
- 2 A Yeah. It may very well be the same page we  
3 just looked at. Can I look at that?
- 4 Q With different material redacted?
- 5 A Can I look at that again.
- 6 Q Sure. Showing you 16010.
- 7 A Apparently not.
- 8 Q It appears that the bindings are on the  
9 different side of the page.
- 10 A Right. The 2 is a bit different.
- 11 Q And on top there's a notation, "Jane S."  
12 Does that refer to Jane Sherbourne?
- 13 A Yes.
- 14 Q Date 7/12/94?
- 15 A Right.
- 16 Q Could you read the entry that appears  
17 there?
- 18 A "Have given White House witnesses' counsel  
19 access to White House documents but as to Treasury  
20 documents, showed only one counsel. Couldn't  
21 remember which counsel. The September 30 Early  
22 Bird."

1 Q Okay. What does that refer to?

2 A It refers to -- it appears to refer to  
3 something Jane told me.

4 Q Okay. Was that something that the White  
5 House had done, or is this something that the  
6 Treasury had done?

7 A It appears to discuss what the White House  
8 had done with respect to Treasury documents that  
9 Treasury had given to the White House.

10 Q Okay. Do you recall this conversation?

11 A No.

12 Q Do you know what the reference is to the  
13 what Treasury documents this note's referring to?

14 A The documents that we had given to the  
15 White House, copies of which we had given to the  
16 White House. I guess that means we had given them to  
17 them by the 12th.

18 Q Okay.

19 A Actually, that's right. We gave them to  
20 them probably the same day we gave them to the  
21 Senate.

22 Q And did you ever learn which Treasury

1 documents were shown to a witness's counsel?

2 A It says "as to Treasury documents showed  
3 only one counsel the September 30 Early Bird."

4 Q I know, but do you know which counsel it  
5 was shown to?

6 A No, I never have found out. I don't even  
7 remember why I asked the question or why Jane gave me  
8 the information.

9 Q Do you have any specific recollection of  
10 discussing this subject?

11 A No. Let me be careful. I sort of remember  
12 being told this by Jane, but what my note doesn't  
13 help me remember is why. Whether I asked the  
14 question or whether it was information she  
15 volunteered, I have no idea.

16 Q Had you heard that White House had given  
17 access to Treasury documents around the 12th of July?

18 A Not that I recall. I mean other than this.

19 Q Other than this?

20 A Other than this, no.

21 Q Let me show you document 16017. Tell me  
22 when you've had a chance to review it.

1 (Witness reviewed the document.)  
2 A Okay.  
3 Q There's a name on the top -- before I say  
4 that, is this, once again, your spiral notebook?  
5 A Yes.  
6 Q Is it your writing that appears here?  
7 A Yes.  
8 Q There's a name that appears on the top  
9 left-hand corner of the document. What does that  
10 read?  
11 A I believe it's Kernan.  
12 Q And who is that?  
13 A One of Roger Altman's attorneys.  
14 Q And the note's dated 7/12/94?  
15 A Uh-huh.  
16 Q Could you read what that entry here says?  
17 A Yes, "thinks IG OGE turning to focus on  
18 authority of Treasury officials to work on RTC  
19 matters."  
20 Q What does that refer to?  
21 A Actually this appears to be something that  
22 Paul Kernan told me in the course of a telephone

1 conversation which actually would not have come as  
2 news to me because I understood that the Office of  
3 Government Ethics wanted from me sort of background  
4 or an opinion or something on the authority of  
5 Treasury officials to work on RTC matters. I had, I  
6 believe, by this time, been asked for that orally.  
7 At one point, I ultimately got a written  
8 request for it from Francine Kerner, but I believe  
9 Francine told me that OGE wanted me to do something  
10 on that even before I got the written request.  
11 Q Okay. And the request you got from  
12 Ms. Kerner, was that on behalf of the IG's office, or  
13 on behalf of OGE?  
14 A I believe OGE had asked her to get it from  
15 me.  
16 Q Was this a document that they requested for  
17 you to create?  
18 A Right.  
19 Q And did you actually do that?  
20 A Yes.  
21 Q With regard to the conversation with  
22 Mr. Kernan, what spurred this conversation?

1 A No idea.

2 Q Does this reflect information that he  
3 gained during the course of interviews?

4 A I would doubt it.

5 Q What caused Mr. Kernan to say that he  
6 thought IG OGE was turning its focus on the authority  
7 of Treasury officials to work on RTC matters?

8 A I could only guess. I don't know.

9 Q Do you have any recollection of talking to  
10 Mr. Kernan about the focus of the OGE or IG  
11 investigation?

12 A Only very vaguely.

13 Q When was Mr. Altman interviewed by the IG's  
14 office, do you know?

15 A I don't know.

16 Q Do you recall having this conversation with  
17 Mr. Kernan on the 12th?

18 A Well, on the 12th. I remember very, very  
19 vaguely, and I couldn't -- short of this note, I  
20 couldn't tell you that it was Kernan, that someone,  
21 one of the private counsel, had told this to me, but  
22 it was actually information that I already had

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1 directly from Francine who had asked me for an  
2 opinion on the subject.

3 Q What was the context in which that private  
4 counsel told you this information?

5 A I don't know. What do you mean, "what was  
6 the context"?

7 Q Was it in reference to information that was  
8 gleaned from being present at an interview?

9 A Oh, I don't know. It could easily have  
10 been a conversation that he had with OGE. I don't  
11 know.

12 Q Was Mr. Kernan in communication with OGE  
13 during this time?

14 A I don't know.

15 Q Do you know if any of the private counsel  
16 were in communication with OGE during this time  
17 period?

18 A Certainly in July they were. Whether at  
19 this point in July, I don't know.

20 Q What would have been the nature of the  
21 contact with OGE?

22 A Well, the OGE was about to issue some sort



1 of report addressing their client's conduct. If I  
2 were those people's lawyers, I would want to be  
3 talking to the person who is going to issue that  
4 report too.

5 Q The question is do you know what the  
6 substance of the contacts were?

7 A No, I don't.

8 Q Or the subjects of the contacts?

9 A No, no. The only one that I know what the  
10 substance of what actually happened after the report  
11 was issued.

12 Q Okay. Before the report was issued, how  
13 many of the private counsels were in contact with the  
14 OGE?

15 A I don't know.

16 Q Do you have an idea of how many?

17 A No.

18 Q Was it at least one?

19 A I don't know that for a fact.

20 Q Were you ever told that private counsel was  
21 in contact with OGE?

22 A I may have been.

1 Q But you have no recollection?

2 A No.

3 (Discussion off the record.)

4 BY MR. O'CALLAGHAN:

5 Q Mr. Schmalzbach, I'd like to show you a  
6 document, 016018, and tell me when you've had a  
7 chance to review it.

8 (Witness reviewed the document.)

9 Again, is this a portion or a page out of  
10 your spiral notebook?

11 A Yes.

12 Q Is this your handwriting that appears on  
13 the page?

14 A Yes.

15 Q Are these notes that you took on the 13th  
16 of July?

17 A Yes.

18 Q With regard to the spiral notebook, were  
19 there any entries that were made that weren't made on  
20 the day that's indicated in the upper left-hand  
21 corner of the page?

22 A Oh, I don't know.

1 Q Did you make all your notes  
2 contemporaneously or --

3 A It was my general practice to. There might  
4 have been an instance in which I did it differently  
5 for some reason. I just don't remember.

6 Q There's an FK 7/13 in the upper left-hand  
7 corner?

8 A Right.

9 Q What does FK refer to?

10 A Francine Kerner.

11 Q That's July 13th; correct?

12 A Right.

13 Q Can you read the first line for me?

14 A "Transcripts returned."

15 Q What is that referencing?

16 A What it suggests to me is that I had  
17 returned transcripts to Francine's office, but I  
18 wasn't sure that she knew about it, so I wanted to be  
19 sure to tell her about it.

20 Q Was this a note to remind you what to say  
21 to her in the telephone conversation?

22 A From the context I infer that that's what

1 it was.

2 Q It doesn't reflect an actual conversation?

3 A That particular note standing by itself  
4 does not.

5 Q Okay. Who returned the transcripts?

6 A I don't remember. Somebody. I mean I  
7 caused it to be done.

8 Q Did you task somebody in your office to do  
9 it?

10 A I could have taken them upstairs myself. I  
11 could have asked someone else to walk them upstairs.

12 Q And where is her office in relation to  
13 yours --

14 A Her office was --

15 Q -- during this time period?

16 A -- in the middle corridor on the second --  
17 that's to say the Treasury building is oriented  
18 north/south this way. There is a corridor halfway.  
19 She was on -- her office --

20 Q The corridor that intersects the building?

21 A Right, cuts the building in half. Her  
22 office was on the second floor in that middle

1 corridor and mine is, I guess it's about halfway  
2 between that middle corridor and the south end of the  
3 building on the first floor, the floor below.

4 Q As of July 13th, how many transcripts did  
5 you have in your possession?

6 A I don't know. My guess is between four and  
7 six, but I honestly don't remember.

8 Q And how many inches high would those  
9 documents have been, if you could articulate it?

10 A Something like that; I don't remember.

11 Q Other than putting your hand --

12 A I would say between three and six inches.

13 Q So it would be easy to carry?

14 A Oh, yes.

15 Q And if this has been asked and answered,  
16 feel free to let me know, but did you express to her  
17 any opinion as to how you felt about returning the  
18 transcripts?

19 A It has been asked. I did the best I could  
20 of answering which is I don't remember any  
21 discussions.

22 Q How about after you returned them, did you

1 express your -- did you tell her how you felt about  
2 returning the transcripts?

3 A I doubt it.

4 Q At any time?

5 A I don't remember whether I did in this  
6 conversation or when she asked for them back. I  
7 seriously doubt afterward that we would have talked  
8 about it at all.

9 Q Did you have any conversations with anyone  
10 else involved in the IG's office with regard to  
11 returning the transcripts?

12 A Not that I recall. I don't think so.

13 Q Did anyone else at the IG's office know  
14 that you were in possession of the transcripts during  
15 this time period?

16 A I have no idea what other people in the  
17 IG's office knew.

18 Q Do you know if Bob Cesca knew?

19 A I have no idea whether any other people in  
20 the IG's office knew.

21 Q Did you subsequently ever inform anyone in  
22 the IG's office that you had the transcripts during

1 this time period?

2 A No.

3 Q Did anyone ever ask you?

4 A No.

5 Q Were you ever told not to inform other

6 people in the IG's office that you had the

7 transcripts?

8 A Not that I recall.

9 Q Were you ever told not to, were you ever

10 told not to tell anybody else that you had the

11 transcripts?

12 A Not that I recall.

13 Q Who else in your office knew that you were

14 in possession of the transcripts?

15 A I don't know that anyone knew.

16 Q Did Steve McHale know?

17 A I don't know that he did.

18 Q Where did you keep them?

19 A They were in a briefcase, which is now

20 falling apart underneath the foot well of my desk up

21 against the front there.

22 Q Do you have a safe in your office?

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1 A No.

2 Q Does anyone else have access to your office

3 when you're not there?

4 A Yeah. I lock it when I leave.

5 Q Do you lock it every time you leave or just

6 when you leave for the night?

7 A When I leave for the night.

8 Q How many people --

9 A Of course I wasn't leaving much in those

10 days.

11 Q During this time period how many people

12 would you say went in and out of your office on a

13 daily basis?

14 A I have no idea.

15 Q Was it a busy time?

16 A You bet.

17 Q Were there a lot of people in and out?

18 A It was a busy time for me. Whether there

19 were a lot of people in and out, probably not a lot

20 of people.

21 Q Was there information in your office that

22 was used by other people on your team?

1       A    Well, I'm trying to remember, if there ever  
2 was, if there was at this time. No. I may have had  
3 copies of some of the Treasury documents in my  
4 office, but they were copies, duplicates of a major  
5 set that was kept across the hall.

6       Q    Did the group that you were working with  
7 during this time period, did you have a general work  
8 area that you worked out of during this time period,  
9 or did people work out of their own offices?

10      A    People mostly worked out of their own  
11 offices.

12      Q    Was there a general work area where they  
13 conducted their work?

14      A    No, they mostly worked out of their own  
15 offices. When they did the Fiske production, there  
16 was a room up on the fourth floor where all the  
17 documents that were turned over were examined, and  
18 you know, decided whether or not they were  
19 responsive, but we didn't have anything like that.

20      Q    And that was before July; is that right?

21      A    That was March. It was March, you know,  
22 6th, 7th, 8th.

1       Q    I'd like to direct your attention to the  
2 next line.

3       A    Yes.

4       Q    If you could read to me the bulleted item  
5 there.

6       A    "IG scheduling interviews of White House  
7 witnesses through the weekend."

8       Q    Okay. What does that refer to?

9       A    I actually have a little bit of -- I recall  
10 being told these things. Whether I was actually told  
11 them in the same conversation that I had with  
12 Francine in which I told her that the transcripts had  
13 been returned, I don't remember. It might have been,  
14 might not have been. Probably doesn't matter.

15      Q    Was this information that was relayed to  
16 you by Ms. Kerner over the phone?

17      A    I'm pretty sure it was, yes.

18      Q    This was information with regard to the  
19 scheduling of White House interviews?

20      A    It was information regarding Francine's  
21 frustration with her clients.

22      Q    Her clients being who?



1 A The IG.

2 Q The IG in general or anyone specific in the  
3 office?

4 A Fred Coco.

5 Q He's one of the investigators?

6 A I believe he was one of the investigators,  
7 yes.

8 Q Did you have an interest in knowing why  
9 the -- did you have an interest in knowing that the  
10 IG was scheduling interviews at the White House  
11 through the weekend?

12 A I was interested in this story.

13 Q At this point had all the Treasury  
14 witnesses been interviewed?

15 A No, Jack DeVore had not been interviewed.  
16 I don't remember who was interviewed when but I  
17 remember reading recently that there was some --  
18 DeVore originally wanted to -- he was down in Texas  
19 at the time. I guess maybe he had business that was  
20 bringing him to Washington on the 18th and that's  
21 when he wanted to do his interview. I also  
22 understood that the IG wanted it to happen earlier

1 than that, and ultimately, that it happened on the  
2 15th.

3 Q Okay. Did you have an interest in the  
4 interview schedule after the Treasury witnesses had  
5 been interviewed?

6 A I guess since it related to when the IG  
7 would be done for sure.

8 Q Okay. But other than the timing of the  
9 report, did you have any other interest in the  
10 interview schedule?

11 A No.

12 Q Is there any specific reason why Ms. Kerner  
13 told you that the interview schedule for the White  
14 House witnesses were going to go through the weekend?

15 A I felt at the time that she was letting off  
16 steam.

17 Q Did she frequently, or had she ever, let  
18 off steam to you before?

19 A Uh-huh.

20 Q How frequently?

21 A Oh, I don't know how frequently.  
22 Occasionally.

- 1 Q When did you first come to know Ms. Kerner?  
2 A Shortly after she came to work at Treasury,  
3 a couple three years. She came to Treasury  
4 immediately after having worked for a woman at the  
5 Department of Commerce who used to be my deputy at  
6 Treasury. It's a small world.  
7 Q What's her name?  
8 A Barbara Fredericks.  
9 Q Had you had any contact with Ms. Kerner  
10 before she started at Treasury?  
11 A No, I don't think so. I heard of her as  
12 she was interviewing for the position at Treasury,  
13 but I had never met her.  
14 Q Did you write a recommendation from  
15 Ms. Kerner?  
16 A Did I what?  
17 Q Did you provide a recommendation for  
18 Ms. Kerner during the interview process?  
19 A No, I didn't know her.  
20 Q But you had heard of her through your  
21 former deputy; right?  
22 A I'd either heard of her through the former

- 1 deputy or the deputy general counsel told me that one  
2 of the people that was interviewing for the position  
3 had worked for my former deputy.  
4 Q I'll show you a document, 16019. Again, is  
5 this a page from your spiral notebook?  
6 A Uh-huh.  
7 Q Is that your writing that appears there?  
8 A Yes, it is.  
9 Q What's referenced on the document?  
10 MS. STERGIS: Excuse me. I'd like to look  
11 at it first.  
12 MR. O'CALLAGHAN: It's 1-1/2 lines. It  
13 shouldn't take too long. I'm sorry if I jumped the  
14 gun.  
15 MS. STERGIS: There's only one copy for  
16 witness and counsel.  
17 MR. O'CALLAGHAN: These were documents that  
18 were provided by you.  
19 MS. STERGIS: Nevertheless, there's only  
20 one copy which is not standard practice.  
21 BY MR. O'CALLAGHAN:  
22 Q What appears on this document?

1 A The initials EK, the date July 13, 1994,  
2 and then the words "Beattie concern about direction  
3 of IG inquiry."

4 Q And what does EK refer to?

5 A Ed Knight presumably.

6 Q Was this a conversation with Mr. Knight as  
7 referenced here?

8 A I don't recall what it is.

9 Q What does that "Beattie concern about  
10 direction of IG inquiry" refer to?

11 A It occurs to me that it may refer to the  
12 same thing that I think I looked at, a note that  
13 appears to be a conversation with Paul Kernan on July  
14 12th. Seems to be the same thing.

15 MS. STERGIS: Let's go off the record a  
16 second.

17 MR. O'CALLAGHAN: Sure.

18 (Discussion off the record.)

19 BY MR. O'CALLAGHAN:

20 Q You said it made reference to a  
21 conversation you had with Mr. Kernan that you  
22 referred --

1 A I said it seems to refer to the same topic  
2 that was referred to in a note that you have shown me  
3 of a July 12th conversation with Paul Kernan.

4 Q I show you a document Bates stamped 16017.

5 A Right, that's the one.

6 MR. O'CALLAGHAN: Counsel, please let me  
7 know when you've had a chance --

8 MS. STERGIS: Go ahead.

9 BY MR. O'CALLAGHAN:

10 Q Is that the document you're referring to?

11 A Yes.

12 Q Now, in 16019, it refers to "Beattie  
13 concern about direction of IG inquiry." Who is  
14 Beattie?

15 A Another one of Roger Altman's attorneys.

16 Q And does this refer to a different  
17 conversation with Mr. Beattie?

18 A I don't know whether it refers to a  
19 specific conversation with Beattie.

20 Q But it deals with the same subject that's  
21 covered in 16017?

22 A It appears to.

1 Q Does 16019 represent information that you  
2 share with Mr. Knight?

3 A It may. It may have been a note that I  
4 made to myself for a call to Ed which may or may not  
5 have happened.

6 Q Why would you make write a note to call  
7 with Mr. Knight regarding Mr. Beattie's concern about  
8 direction of IG inquiry?

9 A Because it related to the whole enterprise  
10 that we were involved in, and I mean it just was  
11 relevant to the summer's proceedings.

12 Q What was your understanding of what  
13 Mr. Knight's specific interest would be in  
14 Mr. Beattie's opinion?

15 A Context.

16 Q Could you be more specific?

17 A I mean it was one of the things that was  
18 happening. We were sharing information with each  
19 other. I don't know whether this is Ed telling me  
20 this or me telling Ed that.

21 Q I'd like to show you Bates stamp 016022.  
22 Take a moment to review that.

1 (Witness reviewed the document.)

2 Is this another page from your spiral  
3 notebook?

4 A Yes.

5 Q Is this your writing that appears on it?

6 A Yes. By the way, of course, this  
7 (indicating) is not my writing.

8 Q For the record, there is a print that says  
9 "redacted."

10 A It's been on many of these pages. I didn't  
11 write that.

12 Q This script writing?

13 A It's mine.

14 Q Top left-hand corner, what does that say up  
15 there?

16 A EK, it appears to say. I'm pretty sure  
17 that's EK.

18 Q Is that Ed Knight?

19 A Yes.

20 Q 7/14/94?

21 A Yeah.

22 Q What does this entry refer to?

1 A I'm not sure what the context of this is.

2 Q Could you read it for the record?

3 A Sure. "Secretary will get IG fact report  
4 before he testifies. Can't interfere with IG's  
5 investigations. Document access to principal and  
6 attorney. What about access to IG transcript."

7 Q Dealing with the first portion, "Secretary  
8 will get IG fact report before he testifies," what  
9 does that refer to?

10 A I don't know. It appears, I mean I don't  
11 know whether -- it appears -- it's a statement, it's  
12 not a question, and it appears to be a statement of  
13 fact that the Secretary will get that IG report  
14 before he testifies.

15 Q And by July 14th, was it your understanding  
16 that the Secretary would get IG fact report before he  
17 testified?

18 A I don't specifically remember that. This  
19 appears to suggest it.

20 Q Do you recall when you first learned that  
21 the Secretary was requesting to receive the IG fact  
22 report before he testified?

1 A I don't remember.

2 Q Did there come a time when you weren't sure  
3 whether he would get the fact report before he  
4 testified?

5 A That's where we started out.

6 Q Did there come a time when you knew he  
7 would get the fact report before he testified?

8 A Yes, July 22nd.

9 Q The day he got it?

10 A Right. I think that, I probably knew that  
11 the IG was trying very hard to do that, but frankly I  
12 didn't have confidence that it would happen until the  
13 22nd when we got it.

14 Q And how did you know they were trying hard  
15 to do that?

16 A I don't know. I had met with Cesca on the  
17 28th of June. I knew he was interested in doing  
18 that. You know, he didn't want to have the Secretary  
19 go into Congressional testimony looking foolish  
20 because he didn't know what had happened in his own  
21 department.

22 Q Did IG's office ever give you updates as to



1 when they thought they'd be finished --  
2 A They may have.  
3 Q -- during the course of the investigation?  
4 A They may have.  
5 Q Okay. If you could read the next line.  
6 A "Can't interfere with IG's  
7 investigations."  
8 Q What does that refer to?  
9 A It seems like a self-evident proposition.  
10 Q Do you know if it refers to anything  
11 specifically?  
12 A No.  
13 Q Okay. The last line there, could you read  
14 that?  
15 A "What about access to IG transcript."  
16 Q Okay. What does that refer to?  
17 A I don't know. I mean it doesn't have a  
18 question mark. It seems to be stated as a question.  
19 Q Okay. This document --  
20 A You know, as I put this together, this  
21 could very well have been a discussion that I was  
22 having with Ed just about generally where we were,

1 what was going to happen going forward. There's not  
2 much more I can make out of it than that.  
3 Q For your information collection process  
4 that you were engaged in in this time period?  
5 A That was something that was going on also,  
6 but this is more, you know, we know where we have to  
7 be by late July; that is, the Secretary has to be  
8 ready to testify. How are we going to get there?  
9 And these may just have been things that we needed to  
10 think about as we tried to get there.  
11 Q You would return the transcripts to  
12 Ms. Kerner on the 13th; is that right?  
13 A That's what my note suggests. I don't have  
14 a specific recollection of the date.  
15 Q Do you have any reason to think your notes  
16 aren't correct?  
17 A No.  
18 Q Did you have a specific conversation with  
19 Mr. Knight with regard to handing over the  
20 transcripts back to Ms. Kerner?  
21 A I don't believe Ed knew that I had the  
22 transcripts.

1 Q This reference to "what about access to IG  
2 transcripts," did you raise that issue with  
3 Mr. Knight?

4 A It was an issue that had been discussed  
5 among Bob McNamara, Steve McHale, Ed, and myself on  
6 several occasions. Whether on this occasion I raised  
7 it with Ed or not, I don't know.

8 Q Do you recall after returning the  
9 transcripts to Ms. Kerner on the 13th whether you  
10 approached Mr. Knight about getting copies of the  
11 transcripts again?

12 A Approached Mr. Knight?

13 Q This document indicates that you were --

14 A We were talking about getting copies of the  
15 transcripts all along starting back in May. I'm sure  
16 Ed was a party to one or more of those discussions.

17 Q What I'm specifically referring to is, the  
18 last line of this document says "what about access to  
19 IG transcripts," and the question was whether you  
20 recall discussing this subject with Mr. Knight around  
21 the 14th of July?

22 A I don't specifically recall, no.

---

1 Q Does this entry tend to indicate that you  
2 did have a discussion with Mr. Knight?

3 A No, it actually doesn't.

4 Q Why is that?

5 A Because it can equally be something that I  
6 told him in the course of the conversation, that he  
7 told me in the course of a conversation, or that I  
8 wrote down that I wanted to talk to him about, and  
9 did or did not talk to him about on this date.

10 Q Okay. Just for clarity, did you ever tell  
11 Mr. Knight that you had received the transcripts --

12 A No.

13 Q -- between the 8th and the 13th?

14 A You've asked that question before and the  
15 answer is no.

16 Q At no time; you never told him?

17 A I honestly don't believe that I ever told  
18 him that.

19 Q Did you make a conscious effort not to tell  
20 him that?

21 A I don't remember making a conscious  
22 effort. I just didn't.

1 Q Did you tell Mr. McHale that you had the  
2 transcripts?

3 A That I'm less sure about. I don't  
4 specifically remember doing it. It's possible I may  
5 have.

6 Q Do you remember that you didn't tell him  
7 you had the transcripts?

8 A I don't specifically remember whether I did  
9 or did not.

10 Q Did you tell Mr. McNamara you had the  
11 transcripts?

12 A That would be unlikely.

13 Q Why is that?

14 A Because he's, I'm not as close with Bob as  
15 I am with Steve. Steve is my deputy.

16 Q Did Mr. Cesca know that you had the  
17 transcripts?

18 A I don't know. You did ask that question  
19 before, and I don't know the answer.

20 Q I'd like to have you look at a document,  
21 Bates 10979.

22 (Witness reviewed the document.)

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1 Actually I'm going to ask you to look at  
2 another document instead of that, which I believe is  
3 a copy of the same document with --

4 A Different redactions.

5 Q -- different redactions which are less  
6 inclusive. Let me know when you've both had a chance  
7 to review it.

8 (Witness reviewed the document.)

9 A Uh-huh.

10 Q Is this a page from the same spiral  
11 notebook that we've been referring to all day?

12 A Yes, forever and ever and ever.

13 Q Is this your writing that appears on the  
14 document?

15 A Yes.

16 Q Okay. What does this refer to?

17 A It appears to refer to a conversation with  
18 Jane presumably.

19 Q Jane Sherbourne?

20 A Jane Sherbourne, right.

21 Q The date on here, just for the record,  
22 7/15/94?

1 A July 15th, '94, right. It appears to me  
2 that I wrote down "proffers as to White House  
3 witnesses" before the conversation took place.

4 Q And what makes you say that?

5 A Because there is a check mark next to it as  
6 if it was something that I had written down  
7 beforehand, and the check mark is indicating that I  
8 had covered it.

9 Q Okay. And what was your discussion with  
10 Ms. Sherbourne with regard to proffers with the White  
11 House witnesses?

12 A I actually don't ever remember talking to  
13 Ms. Sherbourne about proffers as to White House  
14 witnesses, so I can't tell you what the discussion  
15 was.

16 Q During July, did you have any discussions  
17 with regard to proffers in White House witnesses?

18 A This indicates that I did, but I have no  
19 other recollection of it.

20 Q Was it ever contemplated that the Office of  
21 General Counsel received proffers from White House  
22 witnesses during this time period?

1 A I'm quite certain it was never contemplated  
2 that we would receive proffers from White House  
3 witnesses.

4 Q How about as to White House witnesses?

5 A We might have sought and we didn't get, but  
6 we might have -- at least I don't think we did -- get  
7 proffers from White House counsel as to what they had  
8 learned in their interviews with White House  
9 witnesses.

10 Q Did you ever receive proffers from the  
11 White House as to their witnesses?

12 A Not -- we never -- when we got proffers  
13 from private counsel to Treasury witnesses, there was  
14 sort of a, not formal but it was a face-to-face  
15 sit-down in most cases -- in one case it was over the  
16 telephone -- in which they basically walked us  
17 through everything that their clients had testified  
18 to. I think they did it after their Senate  
19 interviews, but I'm not sure about that.

20 That kind of proffer never happened from  
21 White House counsel. White House counsel may have at  
22 some point told us what one or more witnesses at the

1 White House had told White House counsel, possibly.  
2 I don't remember any, but quite possibly.

3 Q Would that have come, would that  
4 information have been related to you by Jane  
5 Sherbourne?

6 A Yes, in all likelihood.

7 Q And what form would that have taken,  
8 written statement, oral presentation?

9 A It would have been something that she said  
10 in the telephone conversation with me.

11 Q Just relating to the details of an  
12 interview that might have occurred?

13 A I don't have any specific recollection of  
14 it having happened, but as frequently as Jane and I  
15 talked, it wouldn't surprise me. And since Jane was  
16 conducting the interviews of White House witnesses,  
17 it wouldn't surprise me if she had told me something  
18 about what a White House witness had said.

19 Q Did you ever relate to her what any  
20 Treasury witnesses said during IG interviews?

21 A I didn't know what Treasury witnesses were  
22 saying during the IG interviews.

1 Q When did you first learn what Treasury  
2 witnesses had said during IG interviews?

3 A Obviously I was given information which I  
4 didn't look at, which I then returned.

5 Q Which you received you said between the 8th  
6 and 13th of July?

7 A Yeah, and probably sometime -- I don't know  
8 how long -- after the 18th, I didn't actually, I  
9 never have to this day read cover-to-cover the  
10 transcripts. I probably read many of the summaries  
11 that my staff had prepared of those transcripts --

12 Q Okay.

13 A -- but that would have been, obviously,  
14 sometime after the 18th.

15 Q Did you learn what Treasury witness had  
16 said, any time prior to the 22nd, from any other  
17 source?

18 A Well, there was the instance where it looks  
19 like I had information about what Ben Nye had talked  
20 about. I can't remember whether that was talked to  
21 the Senate or talked to the IG or talked to the  
22 House. I honestly don't remember that.



1 Q Did any other Treasury witnesses relate to  
2 you what the substance of their testimony was?

3 A Did the witnesses relate?

4 Q Yes.

5 A No.

6 Q Did any of their counsel?

7 A We got proffers from counsel for Jean  
8 Hanson, sort of an abbreviated proffer from John  
9 Kenney who was another one of Roger Altman's  
10 attorneys. A proffer from Reed Weingarten who was  
11 Josh Steiner's attorney, and Bob Bowers who was Jack  
12 DeVore's attorney.

13 Q When did you receive those proffers?

14 A I don't remember when, I don't remember the  
15 dates.

16 Q Was it before the 22nd of July?

17 A It may have been.

18 Q Was it before you received the draft IG  
19 report?

20 A I know that's the significance of that  
21 date. I just -- I expect that it was because my  
22 general sense of those proffers is that they came as

1 news to me.

2 Q Okay. Who arranged to receive the  
3 proffers?

4 A The combination of Bob McNamara and me.

5 Q And when had you arranged to have those  
6 offered?

7 A I think we had probably talked about them  
8 at various times. I don't remember exactly when it  
9 was, when the private counsel agreed that they would  
10 give them to us. The private counsel, I mean they  
11 probably agreed at different times and I don't  
12 remember those dates.

13 Q Who were the proffers provided to?

14 A To Bob McNamara and to me. Actually Bowers  
15 was just me and I don't remember whether McNamara sat  
16 in on Harvey Pitt's or not.

17 Q Were these oral proffers?

18 A Yes.

19 Q Where did they take place?

20 A Different places in the department.

21 Q So at the Department of Treasury?

22 A Right.

- 1 Q Different rooms?
- 2 A Right.
- 3 Q Did you take any written notes or were they
- 4 recorded?
- 5 A They were not recorded. I may have taken
- 6 notes.
- 7 Q Did anyone else attend them with you who
- 8 took notes?
- 9 A As I said, Bob attended, certainly attended
- 10 John Kenney's. I can't actually remember how we got
- 11 Reed Weingarten's, although I do remember hearing
- 12 from Reed. I don't -- so the only one I specifically
- 13 remember another person being there is John
- 14 Kenney's. I don't know whether Bob took notes or
- 15 not.
- 16 Q Who is John Kenney?
- 17 A He's one of Altman's attorneys.
- 18 Q And were there any clerical people there?
- 19 A No.
- 20 Q Do you recall, were these proffers made
- 21 before you received the transcripts?
- 22 A You've asked that question; I've answered

- 1 it.
- 2 Q On the 18th?
- 3 A I don't remember.
- 4 Q I believe I asked you if you received them
- 5 before the 22nd, before you got the draft report?
- 6 A I'm sorry, you did. Right.
- 7 Q I'll ask it again then. You don't remember
- 8 whether you received it on or about the 18th of July?
- 9 A I wouldn't be surprised if we received them
- 10 before the 18th. I just don't remember the dates.
- 11 Q How did you come to receive the transcripts
- 12 on the 18th?
- 13 A I don't understand the question.
- 14 Q Did you request that they be delivered, was
- 15 there an arrangement that was entered into?
- 16 A I don't know the details of how that was
- 17 done.
- 18 Q Were you involved in arranging for the
- 19 transcripts to be delivered from IG before the 18th?
- 20 A I mean I was certainly involved in
- 21 discussions of whether -- we had been involved for a
- 22 couple of months -- of whether we would get the

1 transcripts. Whether I arranged the logistics or was  
2 involved in arranging the logistics, I don't remember  
3 being involved. I might have been. I might have  
4 been told about what was happening. I don't know.

5 Q Was Steve McHale involved in arranging for  
6 the transcripts to be turned over on the 22nd --  
7 18th, excuse me?

8 A Yeah, I don't know.

9 Q Did you receive a copy in your office on  
10 the 18th?

11 A I assume that my office received a copy on  
12 the 18th. I may have received a copy on the 18th. I  
13 just don't remember.

14 Q How many copies were provided to your  
15 office?

16 A I don't know.

17 Q Was it more than --

18 A I would assume one.

19 Q Was it more than one?

20 A I don't know. I just don't know.

21 Q Do you recall if there was a copy that the  
22 people were working on and a copy they sat to the

1 side?

2 A I don't remember.

3 Q Were you informed before the 18th that your  
4 office was going to receive transcripts from the IG's  
5 office?

6 A This note suggests that I had an inkling  
7 that we would get them on the 18th, on the 15th.

8 Q And did Ms. Sherbourne relay that  
9 information to you?

10 A No, I'm certain that she didn't.

11 Q Who would have relayed that information to  
12 you?

13 A My guess is it would be Francine or it  
14 could have been Steve. It could have been someone  
15 else on my staff.

16 Q How about with regard to the IG's office,  
17 would anyone other than Ms. Kerner have told, related  
18 that information to your office?

19 A That seems unlikely.

20 Q She was your main contact with the IG's  
21 office; is that correct?

22 A Right.

1 Q Do you recall whether there was -- looking  
2 at document, I believe 11435, it says "transcripts -  
3 should have Monday night." Do you recall whether  
4 there was a schedule set up for when you should have  
5 received the transcripts or if there was a  
6 significance to receiving them on the Monday night?

7 A I don't recall anything about this. This  
8 note suggests to me that I had an indication that it  
9 was likely that we would get them Monday night,  
10 Monday night being the 15th -- the 18th, rather.  
11 Monday being the 18th. Monday night.

12 Q Were there any discussions regarding  
13 whether it was appropriate for your office to receive  
14 them on the 18th?

15 A There had been discussions about that for a  
16 couple of months.

17 Q Specifically the week of the 15th, do you  
18 recall any discussions that occurred?

19 A I don't remember whether there were or not.

20 Q Did you have any specific, or did anyone in  
21 your office have any specific discussions with  
22 Mr. Cesca with regard to the appropriateness of your

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1 office receiving the transcripts on the 18th?

2 A It could easily have come up at the meeting  
3 that I had with him and Francine and Jim Cottos on  
4 June 28th. I actually don't remember much of what --  
5 I don't really remember anything that was said at  
6 that meeting.

7 Q Well, between the time you returned the  
8 transcripts on the 13th to Ms. Kerner and when you  
9 received transcripts on the 18th, did you have any  
10 discussions with Mr. Cesca with regard to --

11 A No.

12 Q -- your obtaining transcripts?

13 A No.

14 Q Did you have any conversations with  
15 Ms. Kerner about your --

16 A I don't remember any discussions. I may  
17 very well have.

18 Q Had you entered into an agreement to  
19 receive the transcripts again before you returned  
20 them?

21 MS. STERGIS: I'm sorry. I didn't hear  
22 that question.

1 BY MR. O'CALLAGHAN:

2 Q Had you entered into an agreement to  
3 receive the transcripts at another time before you  
4 turned them in on the 13th?

5 A Could have been, could have been. "Entered  
6 into an agreement" is probably an inappropriate way  
7 of phrasing it.

8 Q Had you been told that you would receive  
9 them?

10 A I may have understood that, at some later  
11 point in the progress of the IG's work, we would get  
12 copies of the transcripts.

13 Q Was that point identified at the time you  
14 returned the transcripts on the 13th?

15 A I don't remember any conversation  
16 surrounding the return of the transcripts.

17 Q Outside of the conversations, any  
18 understanding at all?

19 A I honestly don't remember, or I mean it  
20 could have been that they just went back and that we  
21 talked more about it later, or that it was understood  
22 that there had been a decision made that it was too

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1 early for us to have the transcripts, and at some  
2 later point it would be appropriate, and then we  
3 would get them.

4 Q Do you know if anyone made a decision  
5 either in the IG's office -- that it was appropriate,  
6 it was an appropriate time to give them to you on the  
7 18th?

8 A I don't know what -- I don't know that.

9 Q Have you heard, has anyone told you?

10 A No.

11 Q I'm sorry, I'd like to direct your  
12 attention one more time to 11435. And now, does this  
13 document reflect a conversation with Ms. Sherbourne?

14 A Does it reflect -- it may.

15 Q Did you tell Ms. Sherbourne, in advance of  
16 your receipt of the transcripts on the 18th, that you  
17 were going to receive them?

18 A If I followed this note to myself, I did.

19 Q And do you have any reason to think that  
20 your note doesn't accurately reflect what happened?

21 A No, it's pretty much -- there's an element  
22 of happenstance as to whether or not I actually get



1 what I want to cover in a conversation covered. I  
2 may get distracted with something else.

3 Q And the question is do you have a  
4 recollection now of whether you related to  
5 Ms. Sherbourne that you expected to get the  
6 transcripts on Monday night?

7 A No, I don't have a recollection.

8 Q The next two lines there read "does White  
9 House" -- well, if you could read it.

10 A "Does White House want before witnesses  
11 complete Senate Banking Committee interviews?"

12 Q What does that refer to?

13 A That presumably is a question as to whether  
14 the White House wanted the IG transcripts of  
15 interviews before the Senate Banking Committee  
16 completed its interviews.

17 Q Did you ever pose that question to  
18 Ms. Sherbourne?

19 A I don't know. I mean, I may have.

20 Q Do you have any reason to believe that you  
21 didn't?

22 A The only reason I have to believe that I

1 did is because I wrote it down as something to do on  
2 this piece of paper.

3 Q Were you ever told that the White House  
4 wanted a copy of the transcripts before the Senate  
5 Banking Committee interviews were completed?

6 A I may very well have been told that. I  
7 don't specifically remember it. I don't think -- at  
8 the end of the day, I'm not sure the White House ever  
9 got them.

10 Q That's not the question.

11 A No, I understand.

12 Q Were you told that they wanted them?

13 A I may have asked this question. They may  
14 have answered it. I don't know whether I asked the  
15 question, and if I did, I don't know what they  
16 answered.

17 Q So you have a faint recollection that this  
18 might have happened --

19 A No, I don't have any recollection that this  
20 might have happened other than -- I really don't have  
21 any independent recollection and this note is not  
22 helping me a lot. It is my style when I'm writing

1 things down that I want to cover in a conversation,  
2 if I do cover them I write a check mark next to it.  
3 There's no check mark next to "Treasury transcripts  
4 should have Monday night." There is no check mark  
5 next to the question about whether the White House  
6 wanted them when.

7 MR. O'CALLAGHAN: Okay. Counsel, I make a  
8 request. If we could receive a copy of this that  
9 identifies specifically what portions were redacted  
10 to see if --

11 MR. BUCKLES: Which number is that again?

12 MR. O'CALLAGHAN: 11435, and it's hard to  
13 tell from the document, as it exists here, what was  
14 redacted.

15 MR. BUCKLES: Okay.

16 THE WITNESS: For whatever comfort it is to  
17 you, I'm laboring under the same disadvantage. I  
18 haven't had the original of this since November and I  
19 don't know what the rest of it says.

20 MR. O'CALLAGHAN: It might reveal whether  
21 or not there was a check mark.

22 MR. BUCKLES: Okay.

1 MR. O'CALLAGHAN: Could be instructive.  
2 Thank you.

3 BY MR. O'CALLAGHAN:

4 Q When you received the transcripts on July  
5 18th --

6 A When the transcripts were received. Again,  
7 we've already discussed that. I don't recall the  
8 logistics of how they got there.

9 Q Okay. The specific physical --

10 A I have every reason to believe that the  
11 transcripts were in my office on the 18th of July.  
12 How the hell they got there, I haven't a clue.

13 Q Did you have any discussions with anyone at  
14 IG or Ms. Kerner with regard to any limitations put  
15 on your use of the transcripts?

16 A Did I have discussions?

17 Q Or anyone in your office.

18 A I think there were discussions.

19 Q And what were the discussions?

20 A The discussions were that they were --  
21 well, see, we may -- actually I don't know whether  
22 the IG cared about that or not. We had, I guess

1 acquiesced is the right word in a request from the  
2 Senate Banking Committee that we not share  
3 information about what one witness had said with  
4 another witness until -- and we reluctantly  
5 acquiesced in doing that -- until the Senate  
6 completed its depositions. I don't -- whether that  
7 was a product of an agreement with the IG -- actually  
8 I don't think so. I think it was more a product of  
9 an agreement with or we acquiesced in something that  
10 the Senate had asked for.

11 Q But did you come to a specific agreement  
12 with the IG's office with regard to handling the  
13 transcripts?

14 A I have no reason to believe that it's a  
15 written agreement. What oral agreement there may  
16 have been, I don't remember.

17 Q Okay. Who would have had the discussions  
18 with the IG?

19 A Could have been me, could have been Steve  
20 McHale, could have been Bob McNamara.

21 Q But you don't have any recollection?

22 A I'm trying to think of -- no.

1 Q Around the 18th of July, did the Secretary  
2 have knowledge that your office was going to be  
3 receiving the transcripts?

4 A I have no idea.

5 Q Is this something you generally would have  
6 given to him a notification about?

7 A No, not generally.

8 Q Were you keeping him advised on a daily  
9 basis of the progress of your testimony preparation  
10 efforts?

11 A No, I was not doing that.

12 Q Did you have any discussions with him with  
13 regard to transcripts during July of '94?

14 A Yes, but it was after we had received --  
15 actually I don't even remember if I had direct  
16 conversations with him. I know that he was involved  
17 in thinking about, or at least I had been told that  
18 he was involved in thinking about, much as we were  
19 thinking about, the point at which we could give  
20 copies of the Inspector General's transcripts of  
21 interviews to the other Treasury witnesses.

22 Q And you've been told he had been given

1 that --

2 A In fact, his testimony, if nothing else,  
3 his testimony before the Senate suggested --

4 Q I don't want to interrupt you but the  
5 question is whether you were told during this time  
6 period that --

7 A I don't remember. But the difficulty is  
8 that I do remember, to some extent, his testimony.  
9 He talked about this in the Senate, and he indicated  
10 that he had -- actually, no.

11 What he talked about was giving the  
12 transcripts to White House counsel. I don't think he  
13 did ever talk about -- I just, I sort of generally  
14 had the understanding that he knew that was  
15 happening. I don't remember whether I --

16 Q With regard to Treasury witnesses?

17 A Yeah.

18 Q And the discussions that were involved in  
19 when it would be appropriate to give them access to  
20 the transcripts?

21 A That he was aware that it was an issue.

22 Q Who told you that?

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1 A I don't remember who. It might very well  
2 have -- it likely would have been Ed Knight, but I  
3 don't remember any specific conversation. I may have  
4 even attended a meeting with him at which that was  
5 discussed. I honestly don't remember. Most of the  
6 meetings we had were later.

7 Q Okay. What meetings did you have with him?

8 A Well, we were preparing him, we were asking  
9 him questions and writing down the answer for the  
10 various interviews of him that were going to be  
11 conducted.

12 Q Did you have any meetings with him where  
13 the transfer of transcripts to the White House was  
14 discussed?

15 A No.

16 Q Did Secretary Bentsen participate in any  
17 meetings where the transfer of transcripts to the  
18 White House was discussed?

19 A I don't know.

20 Q Have you ever heard that?

21 A I have heard it was an unresolved issue and  
22 I never did find out what the answer was. It was a

1 question that we considered in connection with  
2 answering the Bond questions, as to whether or not  
3 there had been a Cutler-Bentsen conversation. And at  
4 the end of the day, we never have learned an answer.  
5 I have never learned an answer to that.

6 Q In responding to the Bond questions, did  
7 anyone at Treasury ask the Secretary whether he had a  
8 discussion with Mr. Cutler with regard to the  
9 transcripts?

10 A I don't believe so. I don't know.

11 Q But you're not aware of --

12 A We tried to find out and ultimately decided  
13 to answer the question without that information.

14 Q Why did you decide to do that?

15 A Because we didn't have the information.

16 Q Had it been suggested to ask the Secretary  
17 if he had had a conversation with Mr. Cutler?

18 A Uh-huh.

19 Q Who made that suggestion?

20 A Probably -- well, I don't know. It may  
21 have been Steve, but I don't know.

22 Q And who was the suggestion made to?

---

1 A I don't know -- oh, wait a minute. I have  
2 seen -- there are two things. I have seen a note  
3 that came back to Steve, that's in my secretary's  
4 handwriting, that says roughly to the effect that  
5 Dennis says that Ed has decided not to ask the  
6 Secretary about this. And I have also seen a note in  
7 my own handwriting, again I think it's sort of 40 SK  
8 telecon, it's dated October 24th, and it suggests  
9 that I was going to ask Ed to ask the Secretary.

10 Why I would do that on October 24th when we  
11 had answered the Bond questions on October 21st, I am  
12 completely clueless.

13 Q Did you do that maybe as a follow-up?

14 A I have no idea. I don't even know if I did  
15 do it.

16 Q Okay. Did Mr. Knight give a reason why he  
17 didn't want to ask the Secretary that question?

18 A That note contains the reason why.

19 Q Do you recall, did it concern --

20 A I'd rather look at the note rather than  
21 rely on my recollection.

22 Q I'd like to get your own recollection.



1 MS. STERGIS: Objection. You are asking  
2 him to testify about a document. The witness has  
3 asked to see that document.

4 THE WITNESS: And you are telling me I  
5 can't?

6 MR. O'CALLAGHAN: No, I'm not telling you  
7 that you can't.

8 THE WITNESS: I won't answer the question  
9 without seeing the document.

10 BY MR. O'CALLAGHAN:

11 Q So you're not going to give me your  
12 independent recollection?

13 A I don't have an independent recollection of  
14 what the document says. That's all I have.

15 Q No, as to whether, well, what the reason  
16 was Mr. Knight said that he didn't want to ask the  
17 Secretary the question?

18 A The only recollection that I have is from  
19 having looked at that document. If you show me the  
20 document, I will tell you everything I know.

21 Q Okay. When did you first see the document,  
22 do you know?

1 A I think sometime in the last couple of  
2 weeks.

3 Q I'd like to show you what's been marked  
4 011803. It's not a tremendous quality copy, but I  
5 think that's how it was produced.

6 Let me know when you've had a chance to  
7 read it. It's a one-page document with some  
8 handwritten notes on it.

9 A It's only handwritten notes.

10 Q Correct.

11 (Witness reviewed the document.)

12 A I'm ready.

13 Q Is this the document that you're referring  
14 to?

15 A Yes.

16 Q Okay. Does this refresh your recollection  
17 as to why Mr. Knight decided not to ask the Secretary  
18 about it?

19 A It refreshes my recollection of the  
20 contents of this note.

21 Q But, well --

22 A Again, all I know about this is what's in

1 this note. I don't know anything else about it.  
2 Q You weren't told independently of the note?  
3 A Not that I recall.  
4 Q You didn't have a conversation with  
5 Mr. McHale about it?  
6 A I may have.  
7 Q But you don't recall?  
8 A No.  
9 Q Okay. That's all I have on that document.  
10 Thank you.  
11 (Recess.)  
12 BY MR. O'CALLAGHAN:  
13 Q Okay. Mr. Schmalzbach, I'd like to show  
14 you a document 10978. Show it to your counsel.  
15 A Is this the copy you want to give us?  
16 Q Oh, I'm sorry. You know what, it doesn't  
17 matter.  
18 A Oh, well.  
19 Q And let me know when you've had a chance --  
20 I'll do a general description of the document for the  
21 record. It's a single-page document with handwritten  
22 notes on it, dated 7/19/94.

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1 (Witness reviewed the document.)  
2 Okay. Again, is this a page from your  
3 notebook that we've been discussing?  
4 A Yes.  
5 Q Is it your handwriting that appears on it?  
6 A Yes, except, of course, as usual for the  
7 redacted.  
8 Q Redacted, and for purposes of the record,  
9 to make it simple, we'll just assume that anything  
10 that says redacted on the document isn't in your  
11 handwriting unless you tell me otherwise?  
12 A Okay. Fair enough.  
13 Q Whose name appears in the upper left-hand  
14 corner?  
15 A Looks like Jane Sherbourne.  
16 Q Okay. And what's the date?  
17 A The 19th of July.  
18 Q Could you read the first portion of the  
19 document for me?  
20 A "From Francine. OGE making noises like  
21 they may not be ready. OGE individuals chance to  
22 comment. OGE verified transcript."

1 Q Okay. And what does that refer to?

2 A I don't know whether this is Jane telling  
3 me this or this is something that I want to tell  
4 Jane. In any case, it appears that Francine Kerner  
5 is a source of the information that OGE has been  
6 expressing concern about whether or not they will be  
7 able to complete their work by the time that  
8 presumably the Secretary needs to testify because OGE  
9 has asked that the individuals be given a chance to  
10 comment on their transcripts or verify their  
11 transcripts. Review their transcripts.

12 Q And had that not been something they had  
13 been provided for earlier?

14 A I don't know.

15 Q Hearing that OGE might not be ready on the  
16 July 19th, would that have caused you some concern?

17 A Hearing that they wouldn't be ready in  
18 time -- I don't think anyone ever expected them to be  
19 ready on July 19th, but hearing that they wouldn't be  
20 ready on time for sure would cause us concern.

21 Q Do you recall having a conversation about  
22 this?

1 A I don't remember any specific  
2 conversations. I'm sure I had, you know, many  
3 conversations about when OGE would be ready.

4 Q Okay. Do you know if OGE -- did anyone  
5 from OGE express to you that they might not be ready  
6 to get their analysis done in time for the hearings?

7 A It is conceivable. I had a few  
8 conversations with Jane Ley in July, it is  
9 conceivable that Jane had said something to me. I  
10 vaguely recall either a piece of correspondence from  
11 OGE or some other reflection of information from OGE  
12 that if they were not ready, thus evidencing that  
13 that might happen, they would be willing to come and  
14 brief the Secretary about their conclusions. I don't  
15 remember when that was.

16 Q Did there -- did that need ever arise?

17 A I'm sorry. What need?

18 Q For them to come and brief the Secretary.

19 A No.

20 Q Did anyone from OGE ever come and brief the  
21 Secretary?

22 A Not that I'm aware of. Well, they didn't

1 come -- Steve Potts brought OGE's report over to  
2 Treasury on Saturday July 30th.

3 Q He personally delivered it?

4 A Yeah, I'm pretty sure he actually came, and  
5 Jane may or may not have been with him. Jane Ley.

6 Q And Mr. Potts?

7 A He's the director of the Office of  
8 Government Ethics.

9 Q Okay. I'd like to direct your attention to  
10 the portion underneath the first redacted portion.  
11 If you could read that.

12 A "Transcripts to individuals today. Talk to  
13 Francine. IG is making sets for individuals."

14 Q What does that refer to? Well, first of  
15 all let's deal with the first line, "transcripts to  
16 individuals today."

17 A Presumably it meant that the IG was going  
18 to be giving individuals their transcripts that day  
19 to verify them.

20 Q Okay. And how did you know that the IG was  
21 going to do that?

22 A It's unclear whether I heard that from

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1 Francine or I heard that from Jane Sherbourne. I  
2 can't tell from the way this note is.

3 Q Did you have a daily contact with  
4 Ms. Kerner during this time period?

5 A Not necessarily every day. We talked  
6 frequently.

7 Q Did anyone at the IG's office keep you  
8 abreast of the uses to which the transcripts were  
9 being put, who they were distributed to and how they  
10 were handled?

11 A Other than discussions of questions about  
12 when Treasury would get the transcripts, I don't  
13 think they were telling us what they were doing.  
14 That was really not the real issue here for us. The  
15 real issue for us was would OGE be ready in time for  
16 the Secretary to have their advice before he had to  
17 go and testify about what had happened and what  
18 decisions he had made in light of what had happened.

19 It just so happened that the particular  
20 thing that, apparently, in Francine's view, was  
21 holding things up here was the need to get the  
22 individuals to review and verify their transcripts.

1 Q Okay. And there's a star there then it  
2 says "talk to Francine"?

3 A Right.

4 Q You said a star means to do?

5 A Right.

6 Q Do you recall if you called Francine on the  
7 19th?

8 A I don't remember whether I did or not.

9 Q Do you remember if you followed up and  
10 talked to her about transcripts to individuals?

11 A I actually don't remember that and I may  
12 very well not have because I have no sense at all of  
13 having talked to her about individuals verifying  
14 their transcripts.

15 Q Okay. Did Ms. Kerner keep you generally  
16 abreast of the progress of the investigation as it  
17 was progressing?

18 A No.

19 Q Did she provide you with periodic  
20 information with regard to the interview schedule?

21 A From time to time, she provided me with  
22 some information about the interview schedule.

1 Q Did she ever provide you with a specific  
2 document that had this schedule on it?

3 A I don't believe so, no.

4 Q And did she provide you or anyone in your  
5 office with that?

6 A I've never seen such a document. The only  
7 documents that -- scheduling documents that I've seen  
8 were Bob McNamara was trying to keep track  
9 particularly of the House and Senate interviews and  
10 when they were going to happen and he would do --  
11 after a while, at one point, he started doing  
12 virtually daily updates of those schedules because,  
13 as we've seen, things change from time to time.

14 Q Did Ms. Kerner keep you or anyone in your  
15 office or anyone under your supervision abreast of  
16 when the transcripts became ready after the  
17 interviews, as they became ready?

18 A I don't think so, no.

19 Q Okay I'd like you to take a look at the  
20 document. The Bates stamp is very difficult to  
21 read. It's a calendar entries in a calendar for the  
22 18th and 19th of July which I believe earlier you



1 testified you prepared sometime in May?  
2 A Right. It may have been June of '95.  
3 Sometime in that time frame.  
4 Q May-June period of '95?  
5 A Right.  
6 Q Please take a look at this and let me know  
7 when you've had a chance to properly review it.  
8 (Witness reviewed the document.)  
9 A Okay.  
10 Q Okay. Under -- Counsel, have you had a  
11 chance to --  
12 MR. BUCKLES: View it.  
13 MS. STERGIS: Yes.  
14 BY MR. O'CALLAGHAN:  
15 Q Under the entry July 18th, there are two  
16 bullet points there; is that right?  
17 A Uh-huh, yes.  
18 Q Could you read to me what it says in  
19 connection with the second bullet point?  
20 A "IG gives administrative general law copies  
21 of transcripts conditioned on use solely for  
22 testimony preparation, not to give to witnesses."

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1 Q Is that your handwriting?  
2 A Yes.  
3 Q And you said you prepared this in the  
4 May-June period of 1995?  
5 A Right.  
6 Q Is that right? Where did you get the  
7 information that appears in that entry?  
8 A Beats me.  
9 Q You have no recollection?  
10 A I don't -- presumably there's a document  
11 somewhere.  
12 Q Were any of these entries that were made on  
13 this calendar in the May-June '95 time period made  
14 without the assistance of a document?  
15 A Not that I recall.  
16 Q So none of this is your independent  
17 recollection?  
18 A Right.  
19 Q Is your recollection that the IG provided  
20 copies of the transcripts to your office conditioned  
21 on that the use would be solely for testimony  
22 preparation and not to give to witnesses?

1 A I have no independent recollection of that  
2 condition. It doesn't strike me as unlikely.

3 Q Have you ever learned that that condition  
4 wasn't attached to the transcripts that were  
5 transmitted to your office?

6 A In preparing this document I read something  
7 that suggested that was the case or said that was the  
8 case.

9 Q But again, you don't have any independent  
10 recollection?

11 A I don't even remember what document I was  
12 looking at. It could very well be this time line  
13 that was prepared in August.

14 Q Was there anyone who, that you're aware of,  
15 from your office who would have engaged in  
16 discussions concerning the conditions on the use of  
17 the transcripts?

18 A Well, the four people in my office who  
19 worked on this were myself, Steve, David Dougherty  
20 and Peter Rittling. What discussions, you know, I  
21 don't remember. It wouldn't be surprising.

22 Q Who are David Dougherty and Peter Rittling?

---

1 A Staff attorneys.

2 Q Who is their supervisor?

3 A Steve.

4 Q Steve McHale?

5 A Steve McHale.

6 Q I'd like to direct your attention to the  
7 other entry on the 19th. Could you read that entry  
8 there?

9 A "Sherbourne says she's heard from Kerner  
10 OGE noises re: not be ready. Cutler plan to call  
11 him." Parenthetical reference to Steve Potts. My  
12 notes. "IG starts giving transcripts of own  
13 interviews to witnesses."

14 Q Okay. With regard to the reference to  
15 "Cutler plan to call him." In parens, that says  
16 "Potts" with a question mark. What does that refer  
17 to?

18 A A document somewhere. I'm sorry. I  
19 believe that, in creating this, I was looking at a  
20 document.

21 Q Okay. Did you ever hear that Mr. Cutler  
22 either called or had indicated that he was going to

1 call Mr. Potts with regard to the readiness of the  
2 OGE analysis?

3 A I never heard that he did call. This note  
4 suggests to me that at this -- whenever i heard the  
5 under -- what is reflected in the underlying document  
6 that he planned to.

7 Q Do you know why Mr. Cutler would call  
8 Mr. Potts with regard to the OGE analysis?

9 A No.

10 Q Did anyone from OGE meet with Mr. Cutler or  
11 anyone in Mr. Cutler's staff during July of 1994?

12 A I don't know.

13 Q You don't have any knowledge of that?

14 A No.

15 Q Have you ever been told that?

16 A No.

17 Q I'd like to have you take a look at  
18 016027.

19 (Witness reviewed the document.)

20 A Okay.

21 Q Once again, is this a page from your spiral  
22 notebook?

1 A Right, yes.

2 Q And what does it say on this entry?

3 A "EK 7/20 IG report -- when? Friday (big  
4 fight)."

5 Q Does this reflect the conversation with  
6 Mr. Knight?

7 A I have no idea what this reflects. It  
8 would suggest that it was something that I was going  
9 to tell Ed Knight or that I'd heard from him. I have  
10 no recollection of -- I'm certain I talked to Ed  
11 about when the OGE report was going to come in -- I'm  
12 sorry. The IG report was going to come in.

13 Q But generally when you put someone's  
14 initials on the top of the page it was a discussion  
15 or subject that concerned --

16 A Or a plan to have.

17 Q Okay. What does the text refer to?

18 A Well, one part there was obviously a  
19 question on the July 20th when the IG's report would  
20 be ready. The thought was Friday whether Ed told  
21 me. It may very well be that Ed told me that. The  
22 reference to big fight, I haven't a clue. I don't

1 remember any big fight about when the IG's report was  
2 going to be ready. I just have no idea what that is.

3 Q Could that have been a product of anxiety  
4 of trying to get the report out in a certain time  
5 period?

6 A I'm sorry. I don't understand your  
7 question.

8 Q Were there any clashes between your office  
9 and the IG?

10 A That's it. I don't remember any big fight  
11 about when the IG report was going to be ready. I  
12 just don't remember it.

13 Q I'm just trying to refresh your  
14 recollection.

15 A Believe me, I have tried to and I have no  
16 idea what that means.

17 Q Okay. Thank you. I have another document  
18 here, which is Bates stamped 16028. I'll have you  
19 take a look at that. Again, it's a one-page document  
20 with the handwritten notes on it. Let me know when  
21 you've had a chance to review it.

22 (Witness reviewed the document.)

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1 MS. STERGIS: Okay.

2 THE WITNESS: All right.

3 BY MR. O'CALLAGHAN:

4 Q Again, is this a page from your spiral  
5 notebook?

6 A Yes.

7 Q And it bears -- what's on the top left-hand  
8 corner?

9 A The initials EK and the date July 20.

10 Q And EK references Ed Knight?

11 A In all likelihood, yeah.

12 Q And then there's some redacted portions and  
13 there's a small amount of text and what does it read  
14 there?

15 A "When IG report? Likely Friday."

16 Q What does that refer to?

17 A When the IG report was going to be made  
18 available to Treasury and likely that it would be  
19 Friday.

20 Q Okay. Is that referring to the same  
21 subject that was referred to in the document we just  
22 reviewed?

1 A It appears to be, yes. Can I see that one  
2 again?

3 Q The one we just reviewed, sure. 16027. I  
4 could ask you one more question, whether this is a  
5 copy of the same page with different redactions?

6 A I don't know but it sure -- well, no, it's  
7 not -- well, it could be.

8 Q For the record, there's an -- looks like  
9 there's an extra swirl on the bottom of the E on  
10 16027?

11 A That may be. It also looks like on the top  
12 of the 7 there is an extra mark, but whether those  
13 are artifacts of the copying process --

14 MR. PORTNOY: I believe if you look at the  
15 number 20, you'll see that it's fairly distinct.

16 THE WITNESS: You're right. You're right.  
17 They're different.

18 BY MR. O'CALLAGHAN:

19 Q Did you ever make corrections to notes that  
20 were entered in your spiral notebook at a later time?

21 A From time to time if I had occasion to go  
22 back and look at a note. Frequently, if it's within

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1 a day or two of the conversation -- I don't write  
2 very quickly and so I will frequently start writing a  
3 note, and then a new subject will come up before I've  
4 had a chance to finish, so I'll go on to the new  
5 subject. Occasionally I'll go back and fill in what  
6 I remember.

7 Q Do you ever rip pages out of this spiral  
8 notebook?

9 A Very rarely, if ever.

10 Q Did you ever take notes and then rip them  
11 out and then retranscribe them?

12 A No.

13 Q I'd like to have you take a look at a  
14 document. It bears the Bates stamps 035 through  
15 038. It's a multipage document which has a fax line  
16 across the top which reads July 21 '94 --

17 A From Kinko's Copies.

18 Q -- from Kinko's Copies. That's right.

19 MS. STERGIS: We need a moment to read  
20 this. This is not from Treasury production.

21 THE WITNESS: Yeah, I've never seen this  
22 before.



(Witness reviewed the document.)

MR. O'CALLAGHAN: If it's of assistance to counsel, I'm going to ask extremely general questions about the document.

THE WITNESS: Good, because otherwise, I'm going to read it from cover to cover and still not understand what much of it is.

(Witness reviewed the document.)

BY MR. O'CALLAGHAN:

Q Okay. Have you ever seen the document Bates stamped 035 through 038 which I've just showed you?

A No.

Q Have you ever heard that Francine Kerner provided suggested edits to the draft IG report?

A I'm sure I was aware of that.

Q How did you become aware of that?

A Presumably she told me.

Q Do you recall the context of the conversation of when she told you?

A No.

Q Did she tell you that she did that on more

than one occasion?

A If she did I don't remember. I don't remember that she --

MR. PORTNOY: Did she tell you on more than one occasion or did she tell you that she provided edits on more than one occasion?

BY MR. O'CALLAGHAN:

Q Did she tell you that she provided edits on -- okay. That doesn't solve the problem either.

MR. PORTNOY: Did -- sorry.

MR. O'CALLAGHAN: I'll ask the question.

BY MR. O'CALLAGHAN:

Q Did she tell you that there was more than one occasion where she made edits to the draft report?

A I don't remember her telling me that.

Q Did she ask you or anyone in your office about edits that your office made or suggested changes your office made to the draft of the IG report?

A Did she ask about them?

Q Did she have any conversations about the

1 edits or suggestion that your office made to the  
2 draft report?

3 A I don't know. She might have. I think we  
4 gave them to her.

5 Q Your office gave --

6 A Let me just -- I really object to the  
7 characterization of what we did as editing anything.  
8 What we identified were instances in which there was  
9 inconsistency between the transcripts and the draft  
10 chronology that we got on the 22nd.

11 Q These are inconsistencies that your staff  
12 identified; is that correct?

13 A Right.

14 Q So these were inconsistencies that your  
15 staff thought existed in the draft report between the  
16 draft report and the transcripts; correct?

17 A Correct.

18 Q And these are inconsistencies that you --

19 A Or omissions, just things in which the  
20 chronology failed to fully and accurately reflect the  
21 transcripts that it purported to summarize.

22 Q In the opinion of the people in your

1 office; correct?

2 A Right.

3 Q Who did your office give these changes to?

4 A I would -- I don't know, but I would assume  
5 they went to Francine.

6 Q Who would have delivered them?

7 A I don't know.

8 Q Or who did deliver them?

9 A I don't know. I didn't.

10 Q Did you direct anyone to deliver them?

11 A I don't believe so.

12 Q Did Steve McHale direct anyone to deliver  
13 them?

14 A I don't know.

15 Q Who else other than Francine Kerner at  
16 Treasury IG was aware that your office was providing  
17 these suggestions to the draft report?

18 A I have no idea.

19 Q Are you aware that anyone else at the  
20 Treasury IG was aware --

21 A I simply don't know.

22 Q Have you ever been told that?

1 A I don't know. I don't recall being told  
2 that. I certainly don't know it now.

3 Q Did Ms. Kerner ever relate to you or anyone  
4 in your office that she had apprised other members of  
5 the IG's office that she was accepting changes,  
6 suggested changes to the report provided by your  
7 office?

8 A Do that again.

9 MS. STERGIS: Read that sentence back,  
10 please.

11 (The reporter read the record as requested.)

12 THE WITNESS: I don't know. She didn't  
13 tell me that.

14 BY MR. O'CALLAGHAN:

15 Q And just for clarity, when I said "she was  
16 accepting changes," I meant the physical documents  
17 that you were providing and not acceding to any  
18 changes that might have been suggested?

19 A In any case, the answer is unchanged.

20 Q Who was aware that your office received  
21 copies of the transcripts on the July 18th -- were  
22 any other offices in Treasury aware of that or any

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1 members of any offices in Treasury? I mean,  
2 obviously, Treasury IG knew you had them, people in  
3 your office knew you had them. Any other offices?

4 A I'm sure Bob McNamara knew I had them. I'm  
5 pretty sure Ed Knight knew that I had them. I don't  
6 know who else would have known.

7 Q Did the Secretary's office know you had  
8 them?

9 A What do you mean, "the Secretary's  
10 office"? Ed Knight was in the Secretary's office at  
11 the time.

12 Q Anyone other than Mr. Knight?

13 A That I don't know.

14 Q And how did Mr. Knight learn that your  
15 office had the transcripts?

16 A Well, if no other way, we probably told  
17 him.

18 Q Was Mr. Knight provided with any copies of  
19 the transcripts?

20 A No.

21 Q His office?

22 A No.

1 Q How about Mr. McNamara's office?

2 A I don't know whether they had, whether Bob  
3 had a copy or not.

4 Q Is it possible that he could have had a  
5 copy?

6 A It's possible. And even if he didn't have  
7 a copy, it's possible he came and looked at ours.

8 Q Did anyone other than Mr. McNamara have  
9 access to the transcripts -- let me withdraw that  
10 question.

11 Other than the people in your office and  
12 Mr. McNamara, were there other officials --

13 A And Mr. Knight.

14 Q And Mr. Knight, Mr. Knight had access to  
15 the transcripts; correct?

16 A Certainly if he had asked for them, we  
17 would have given them to him. I don't recall him  
18 asking for them.

19 Q I guess a simpler question is, was access  
20 to the transcripts restricted to anyone at Treasury?

21 A It was restricted to the people who were  
22 working on preparing Secretary for his testimony and

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1 for taking the actions that he would have to testify  
2 about.

3 Q Okay. And how many people were involved in  
4 that process total?

5 A Probably six -- well, no, it was more than  
6 six because there was also the Secretary -- the guy  
7 who writes the Secretary's testimony who got access  
8 to them around -- I don't know, sometime around the  
9 26th, 27th, 28th of July, something like that.

10 Q What's that person's name?

11 A I think it was Elliott Brenner.

12 Q Elliott Brenner?

13 A Yes.

14 Q Is that B-r --

15 A I don't know for a fact that he got access  
16 to the transcripts. In fact, that's not right. He  
17 didn't get access to the transcripts, what he did --  
18 I think what he got access to at around that time was  
19 the IG's chronology because he was starting to work  
20 on the Secretary's testimony.

21 Q So the chronology, is that the draft  
22 report?

1 A It was what we received on the -- it was  
2 the draft report.

3 Q Did your office ever cause a copy of the  
4 transcripts to be delivered to the White House?

5 A I don't believe we did.

6 Q Did any office in Treasury cause  
7 transcripts to be provided to the White House?

8 A I don't think so. I don't think so.

9 MS. STERGIS: Of the transcripts or the  
10 report?

11 MR. O'CALLAGHAN: The transcripts. I  
12 believe that's what I said.

13 THE WITNESS: Yes, it is what you said.  
14 Let me think about that for a minute.

15 Well, at a minimum when, the Secretary  
16 released the OGE report, the final report, on the  
17 31st of July he released it, someone told me once and  
18 I don't remember who that -- White House counsel came  
19 over to the press conference in the Cash room of the  
20 Treasury Department and picked up a set.

21 Q Was that on the 31st of July?

22 A Yes.

1 Q Did you ever learn that Mr. Cutler made a  
2 request for the transcripts at a time earlier than  
3 the 31st?

4 A Yes, it seems to me that he did, I'm just  
5 not remembering what the hell we did with it. Maybe  
6 it's the hour or something.

7 MS. STERGIS: Maybe we need a break. It's  
8 been --

9 THE WITNESS: Wait a minute. Oh God. At  
10 this moment I cannot remember. I have a feeling that  
11 we -- that White House counsel -- of course White  
12 House counsel got copies of the transcripts. Bentsen  
13 was up there testifying about White House counsel's  
14 access to the transcripts.

15 Anyway, what's your question?

16 BY MR. O'CALLAGHAN:

17 Q The first question is, when did you first  
18 learn that --

19 MS. STERGIS: Go ahead.

20 BY MR. O'CALLAGHAN:

21 Q -- there was a request made by the White  
22 House counsel's office for copies of the transcripts?



1 A When did I first learn about it?

2 Q Uh-huh.

3 A I don't know. I learned sort of long after  
4 the fact, possibly when we prepared this time line in  
5 September after Bond had raised questions about that  
6 that White House counsel had asked the IGs for them  
7 sometime around July 1st I think.

8 Q Okay. And you didn't become aware of that  
9 until after, long after the fact?

10 A At the time I was preparing that time line,  
11 it came as news to me. I've since looked back at my  
12 notes and it seems to me that I knew that White House  
13 counsel was trying to arrange to get access to the  
14 transcripts earlier than that. I may have known  
15 around the 5th of July or something like that.

16 Q Okay. You had frequent contact with  
17 Ms. Sherbourne all throughout the month of July; is  
18 that correct?

19 A Right.

20 Q Did she relate to you a desire to get  
21 copies of the transcripts for the White House counsel  
22 office?

1 A That I don't know. It may very well have  
2 been that Francine told me about it.

3 Q But somebody told you about it?

4 A Right.

5 Q During that time period?

6 A I'm pretty sure, yeah.

7 MS. STERGIS: It's almost 10 of 6:00. Why  
8 don't we take a five-minute break?

9 MR. O'CALLAGHAN: I'd rather not take a  
10 break at this time.

11 MS. STERGIS: I think the witness said he  
12 was tired.

13 THE WITNESS: I have to go to the bathroom.

14 MR. O'CALLAGHAN: I'm just saying as far as  
15 my line of questioning it's a little disruptive.

16 THE WITNESS: How long do you want me to  
17 wait before I go to the bathroom?

18 MR. O'CALLAGHAN: That's fine. We'll take  
19 a break now.

20 (Recess.)

21 BY MR. O'CALLAGHAN:

22 Q Mr. Schmalzbach, I'd like to show you a

1 document bearing Bates stamp 6877. Take a moment to  
2 review it. It was one I showed you earlier today.

3 A Shows you just how tired I was that I  
4 didn't remember this.

5 MR. O'CALLAGHAN: Counsel, have you had a  
6 chance to review it?

7 MS. STERGIS: Yes.

8 BY MR. O'CALLAGHAN:

9 Q And for the record, it's already been  
10 identified for the record, but it's a July 23rd  
11 letter addressed to Jane Sherbourne, Esquire and  
12 Stephen J. McHale, signed by Stephen J. McHale.

13 A Right.

14 Q Just to refresh your recollection as to  
15 when your office made copies of the transcripts  
16 available to the White House --

17 A Yes.

18 Q -- when was that?

19 A July 23rd.

20 Q How did your office come to transmit copies  
21 of the transcripts to the White House?

22 A I don't know. I assume we were asked.

1 Q Do you know who you were asked by?

2 A The fact that this letter goes to Jane  
3 Sherbourne -- misspelled -- suggests that Jane  
4 Sherbourne asked.

5 Q Did you speak with Ms. Sherbourne with  
6 regard to this request?

7 A I don't believe I did.

8 Q Who did?

9 A I think Steve did.

10 Q Did he tell you that he did?

11 A Yes.

12 Q Did he tell you what the substance of those  
13 conversations were?

14 A I don't remember other than that the White  
15 House had asked for transcripts.

16 Q Have you since learned more substantially  
17 what the substance of those conversations were?

18 A No.

19 Q Did you personally receive a request during  
20 this time period for copies of the transcripts --

21 A I don't recall --

22 Q Excuse me. If you just let me finish the

1 question.

2 A I'm sorry. I thought you were.

3 Q I understand. I do it all the time so  
4 you're not alone.

5 Did you receive during this time period,  
6 say, July 22nd, July 23rd, did you personally receive  
7 a request for copies of the transcripts to be given  
8 to the White House counsel's office?

9 A No.

10 Q Did Mr. Knight?

11 A I have no idea.

12 Q Have you heard that he did?

13 A I have not heard that he did.

14 Q Did Secretary Bentsen receive a request?

15 A I don't know.

16 Q Had Mr. McHale received a request for  
17 copies of the transcripts at any time before the July  
18 22nd, July 23rd time frame to be delivered to the  
19 White House?

20 A I don't know.

21 Q Have you ever heard that he did?

22 A I don't recall ever having heard that he

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1 did.

2 Q Did Mr. Knight receive a request from  
3 anyone at the White House for the transcripts at any  
4 time before July 22nd, July 23rd?

5 A I don't know.

6 Q And how about Secretary Bentsen?

7 A I don't know.

8 Q Have you ever heard that Mr. Knight  
9 received a request?

10 A No, I've not heard that Mr. Knight received  
11 a request.

12 Q How about the Secretary?

13 A It seems to me I read a newspaper article  
14 that reported -- in which Cutler reported that he had  
15 asked Bentsen, but I never knew whether that ever  
16 really meant White House counsel to the Treasury, or  
17 Lloyd Cutler to Lloyd Bentsen, or what it meant, or  
18 whether it was correct.

19 Q Were there ever any discussions in your  
20 office of the Treasury or any other office of the  
21 Treasury, that you're aware of, centering around  
22 whether or not there was an agreement between

1 Mr. Bentsen and Mr. Cutler with regard to providing  
2 transcripts in return for having access to White  
3 House witnesses and documents?

4 A I'm sorry. You'll have to redo that. I've  
5 lost the beginning of the question.

6 Q That's fine. If you could read that back.  
7 (The reporter read the record as requested.)

8 THE WITNESS: No.

9 BY MR. O'CALLAGHAN:

10 Q Have you ever heard that such an agreement  
11 existed?

12 A No. Again, with deference to an  
13 incomplete -- anything that I've ever heard about  
14 that was from newspaper reporting and I don't  
15 remember the details of that newspaper reporting.  
16 And I don't remember any newspaper reporting about  
17 conversations within the Treasury Department about an  
18 agreement between Cutler and Bentsen.

19 Q With regard to document 6877?

20 A Right.

21 Q When did you first see this document?

22 A On July 23rd.

1 Q And how did you come to see it?

2 A Steve showed it to me.

3 Q When did he show it to you?

4 A On July 23rd.

5 Q In the morning, afternoon, evening?

6 A All the same. Sometime during the day.

7 Q Were you at work that day?

8 A Yeah.

9 Q And why did he show it to you?

10 A I think he ran it by me to see if I saw  
11 anything about it that should be changed.

12 Q And did you see anything about it that  
13 needed to be changed?

14 A I don't believe I suggested any edits to  
15 him at all.

16 Q Had he told you about this request before,  
17 the request from the White House counsel's office,  
18 before he showed you the letter?

19 A I surmised that I was aware of the request  
20 because I wasn't surprised to see a letter like this.

21 Q Do you recall if you were specifically  
22 informed that a request had been received that day

1 from White House counsel's office, or the day before?

2 A I don't specifically recall that, but  
3 again, I surmised that I knew about it. Otherwise I  
4 might have been surprised when I saw the letter.

5 Q Did you tell him to run the letter by  
6 anybody else?

7 A No.

8 Q Did he tell you whether or not he had shown  
9 the letter to anyone else?

10 A I don't remember him telling me that.

11 Q Did you discuss the terms contained within  
12 the letter when he showed it to you?

13 A No, I read them.

14 Q With regard to the second paragraph --

15 A Uh-huh.

16 Q -- which, it has been a long day and I  
17 don't want to duplicate the transcript, but if  
18 counsel -- I request counsel's assistance on both  
19 sides of the table, let me know whether or not this  
20 paragraph has already been read into the record. If  
21 no one has a recollection I can do it again.

22 MR. BUCKLES: I thought it was yesterday.

1 MR. O'CALLAGHAN: But not today?

2 THE WITNESS: I haven't looked at this  
3 document today, have I?

4 MR. BUCKLES: I think it was read into the  
5 record in connection with a question of Mr. McHale's  
6 yesterday.

7 MR. PORTNOY: I'm fairly confident that  
8 it's not in the record yet.

9 BY MR. O'CALLAGHAN:

10 Q Even if it is, we'll do it again and  
11 whoever reads through it will have to suffer.

12 The second paragraph reads "as we  
13 discussed, these transcripts are being provided to  
14 you solely to assist you in the preparation for  
15 Mr. Cutler's testimony before the House and Senate  
16 Banking Committee hearings. You've agreed that the  
17 transcripts we are providing to you with this letter  
18 will not be disclosed publicly or shown to  
19 individuals (other than Mr. Cutler) who may be called  
20 as witnesses by either committee until such time as  
21 we advise you that this restriction is no longer  
22 necessary.



1 "Similarly, you have agreed not to  
2 disclose these transcripts to counsel for any such  
3 individuals. Please let me know immediately if my  
4 understanding of our agreement is not correct."

5 Did you read this portion of the letter  
6 when Mr. McHale first showed it to you on the 23rd?

7 A I read the whole letter.

8 Q Were the terms as described there with  
9 regard to the use of the transcripts acceptable to  
10 you at the time?

11 A Yes.

12 Q And do you still think they're acceptable  
13 terms?

14 A Yes.

15 Q Do you have any knowledge of whether this  
16 agreement was ever violated by the White House  
17 counsel's office?

18 A I have no knowledge if this agreement was  
19 violated.

20 Q Have you ever heard of activities taken on  
21 by the White House counsel's office that would  
22 indicate that the agreement was violated?

1 A No.

2 Q Have you ever heard that Mr. Cutler said  
3 the following with regard to the use of the  
4 transcripts that were provided by your office to the  
5 White House counsel's office, that he said that if we  
6 found inconsistencies we would go back to White House  
7 officials and go back over testimony they gave us,  
8 then we would say we have heard other reports.

9 Would an activity of this nature constitute  
10 a violation of the agreement so far as your  
11 understanding?

12 MS. STERGIS: Could you show the witness  
13 the document you are reading from, please.

14 MR. O'CALLAGHAN: I'm just asking about the  
15 language. I'm not asking about the document.

16 THE WITNESS: What's your question again?

17 BY MR. O'CALLAGHAN:

18 Q The question was whether if that -- with  
19 respect to that statement, if an activity like that  
20 had been engaged in by the White House counsel's  
21 office, would that constitute a violation of the  
22 agreement that you entered into as you understand it?

1 A No.

2 Q And why is that?

3 A It just doesn't. Didn't say he couldn't  
4 talk to witnesses again when he was aware of  
5 inconsistent testimony.

6 Q So is it your view that if the information  
7 contained in the transcripts was used to confront  
8 witnesses with regard to the accuracy of their  
9 testimony, that that would not be a violation of the  
10 agreement --

11 A I'm sorry. That's not what that says.

12 Q That's a different question?

13 MS. STERGIS: Read back the question,  
14 please.

15 MR. O'CALLAGHAN: Please read back the  
16 question.

17 (The reporter read the record as requested.)

18 THE WITNESS: How do you mean, "used to  
19 confront witnesses"?

20 BY MR. O'CALLAGHAN:

21 Q Well, if --

22 A If Cutler or Jane or Sheila saw

1 inconsistent testimony and used the fact -- told the  
2 witness that we had heard other testimony or  
3 inconsistent -- other reports, I would not consider  
4 that a violation.

5 Q Would you consider that a use of the  
6 information contained in the transcripts?

7 A Sure.

8 Q But one that you think is authorized by the  
9 terms of the agreement?

10 A Yeah, there is no closure to the witness of  
11 the contents of the transcripts.

12 Q Okay. Thank you.

13 On Saturday the 23rd were you informed of  
14 any conversations that occurred between Mr. McHale  
15 and Mr. Cesca with regard to release of the  
16 transcripts?

17 A Not that I remember, no.

18 Q Were you consulted about the release of  
19 transcripts before they were released?

20 A Yeah. When I really -- I have no  
21 recollection at all, but I'm sure I was asked about  
22 and gave my opinion about doing it.

1 Q What consultation was sought?

2 A I don't remember what was sought. I don't  
3 remember whether it was in fact sought or whether I  
4 volunteered. I remember thinking about the question.

5 Q And what was your view on releasing the  
6 transcripts?

7 A My view was and is that it was an entirely  
8 proper thing to do. It was an entirely proper  
9 assistance to a parallel administrative inquiry into  
10 conduct of government officials.

11 Q Did anyone in your office or in Treasury  
12 Office of General Counsel consult with anyone at the  
13 RTC before the transcripts were released?

14 A Not that I know of.

15 Q Did anyone in your office consider  
16 consulting the RTC before releasing the transcripts?

17 A I did not.

18 Q Did anyone in your office?

19 A I don't know.

20 Q Were you ever informed that RTC considered  
21 some of the information contained in the transcripts  
22 to be confidential information?

1 A On July 28th I was.

2 Q How were you made aware of that?

3 A I think Francine told me.

4 Q When did she tell you that?

5 A On July 28th -- maybe -- well, maybe on the  
6 27th. But certainly on the 28th.

7 Q What did she tell you?

8 A That the general counsel of the RTC had  
9 expressed concerns about there being confidential  
10 information in the transcripts, in some of the  
11 transcripts.

12 Q And how did she relay this information to  
13 you?

14 A She told me. I don't remember how.

15 Q Was this on the phone, face to face, do you  
16 recall?

17 A Could have been either. I simply don't  
18 remember.

19 Q How did she come to learn that the general  
20 counsel for the RTC thought the information was  
21 confidential?

22 A That I don't know.

- 1 Q Did she ever tell you?  
2 A No.  
3 Q I'd like to show you a document Bates  
4 stamped 11124. Take a moment to review that.  
5 Counsel, please do the same and let me know when  
6 you've had a chance to review it.  
7 (Witness reviewed the document.)  
8 A Okay.  
9 Q Have you seen the document with the Bates  
10 stamp 11124 before?  
11 A Yes.  
12 Q And when did you first see it?  
13 A I wrote it.  
14 Q So is the time reflected on the --  
15 A I assume that time is accurate. It looks  
16 like it's coming out of our old E-mail system.  
17 Q And the date on it is 7/28/94. Just for  
18 the record I'll describe it. It looks like an E-mail  
19 from Kenneth Schmalzbach to "KNIGTE." Date is 7/28.  
20 Time is 10:44. Subject is "Ryan and Adair telephone  
21 calls." What's reflected in this E-mail?  
22 A My view that Ed might need to call Jack
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- 1 Ryan about making sure that the process of completing  
2 the Inspector General's work not be unreasonably  
3 delayed.  
4 Q Okay. And how did you come to feel that Ed  
5 should call Jack Ryan?  
6 A I don't remember.  
7 Q Does this document -- after reviewing the  
8 document, it doesn't refresh your recollection as to  
9 why you felt that Ed might have to call Jack Ryan?  
10 A Yes, so that the -- because there was a  
11 concern that the completion of the Inspector  
12 General's report might be unreasonably delayed.  
13 Q How was this delay brought to -- potential  
14 delay brought to your attention?  
15 A I assume by Francine. It says Francine  
16 told me this.  
17 Q Do you recall whether she told you this?  
18 A I don't specifically recall her telling it  
19 to me. I wouldn't have written it down if it wasn't  
20 true. Not this, not an E-mail like this.  
21 Q Do you know why Francine Kerner called you  
22 with this information?

1 A I assume she understood that I would be  
2 concerned if the IG's work was going to be delayed.

3 Q And did she inform you by way of a  
4 telephone call, do you recall?

5 A Actually yes, it had to be a telephone call  
6 because as I recall they were out in Rosslyn or  
7 something.

8 Q What's out in Rosslyn?

9 A I don't know.

10 Q Is that where they were working on the  
11 draft of the report?

12 A Yeah, I guess.

13 Q Do you know whether they worked out of --  
14 changes to the draft were done in editing sessions  
15 out in Rosslyn?

16 A I don't know that.

17 Q Was the information that was related to you  
18 by Ms. Kerner, in your view, did it represent  
19 information that pertained to the substance of the  
20 IG's investigation?

21 A No.

22 Q And report?

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1 A No.

2 Q And why is that?

3 A Because it related to the process of  
4 getting the report complete. Didn't have anything to  
5 do with what had happened in the Treasury-White House  
6 contacts.

7 Q With regard to the communication that she  
8 made to you on the 28th, did any of it bear on what  
9 the content of the report might be?

10 A No. It had to -- well, it had to bear on  
11 the transcripts and what was in the transcripts, but  
12 it didn't have anything to do with the IG's report.

13 Q And was her relay of this information  
14 consistent with the Chinese wall that was intended to  
15 be set up between Ms. Kerner --

16 MS. STERGIS: Objection; misstates  
17 testimony.

18 MR. O'CALLAGHAN: I wasn't stating it was  
19 testimony.

20 Okay. Can you read back what I just said.  
21 (The reporter read the record as requested.)

22 MR. O'CALLAGHAN: Do you still object to



1 the --

2 MS. STERGIS: Well, I'll listen to the end  
3 of your question.

4 MR. O'CALLAGHAN: Please let me finish  
5 before you jump in.

6 MS. STERGIS: Do so.

7 BY MR. O'CALLAGHAN:

8 Q Okay. I'm going to have to rephrase now  
9 because my train of thought was disrupted.

10 By furnishing the information with regard  
11 to Ellen Kulka's view of handling of the transcripts  
12 that appears in this E-mail, was Ms. Kerner -- was  
13 relay of this information to you a breach of the  
14 Chinese wall that was meant to be constructed in the  
15 June 27th memo?

16 A That's your characterization of what that  
17 June 27th memo did, A. B, I don't know all the facts  
18 relevant to answering that question. And C, even  
19 without Cesca having approved it, I did not see it as  
20 inconsistent with Francine's responsibilities.

21 Q Okay. So you don't think it her relay of  
22 this information was inconsistent with the

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1 relationship that was meant to be established by the  
2 June 27th memorandum?

3 A No.

4 (Discussion off the record.)

5 BY MR. O'CALLAGHAN:

6 Q Okay. Does looking at 11124, just to make  
7 sure, does that refresh your recollection to what day  
8 you received the call from Ms. Kerner? Was it on the  
9 28th as well?

10 A It doesn't refresh my recollection about  
11 the date. I assume the date is accurate.

12 Q And what's the phone number, your personal  
13 line to your office?

14 A What's what?

15 Q Your phone line, your number at your  
16 office?

17 A 622- -- well, it's either 0451 or 1137.

18 Q That's what it was -- would either one of  
19 those numbers be the number you had during that time  
20 period?

21 A Yeah.

22 Q Okay. I'd like to show you a document

1 Bates stamped 014934 and 014938 and that series.

2 It's a multipage document.

3 (Witness reviewed the document.)

4 Okay. Have you ever seen a document with

5 Bates stamp 014934 through 014938 before?

6 A I'm not certain that I have seen this exact  
7 Bates stamp. I have certainly seen a version of this  
8 document. I think more than one version of this  
9 document.

10 Q And what is this document?

11 A It says "suggested revision to IG report."

12 Q Okay. I understand that's what it is; I  
13 mean other than what it's entitled?

14 A I had nothing to do with preparing or  
15 creating this document, so I, it's -- whatever it is  
16 is what it says it is as far as I'm concerned.

17 Q Do you know who created this document?

18 A No.

19 Q Do you know what office this document  
20 originated from?

21 A I would suspect it originated from my  
22 office, but I don't know that for a fact.

1 Q Why do you suspect it originated from your  
2 office?

3 A Because I believe we had people working on  
4 comparing the transcripts of the IG interviews to the  
5 draft of the report.

6 Q During July of '94, did you receive copies  
7 of suggested revisions in this form?

8 A I don't recall receiving them.

9 Q Did you ever participate in suggested  
10 revisions to reports?

11 A I don't think so, no.

12 Q Do you recognize the handwriting that  
13 appears on this document?

14 A Well, there are actually a number of  
15 different kinds of handwriting. At least two.

16 Q Do you recognize any of them?

17 A I recognize one. I think I recognize one.

18 Q And where does that appear?

19 A On the first page.

20 Q And whose handwriting do you think that is?

21 A Looks like Steve McHale's.

22 Q That's your deputy?

- 1 A Right.
- 2 Q Is he one of the people working on the  
3 revisions?
- 4 A Yes.
- 5 Q Were you given cleaned up copies of  
6 revisions of this nature?
- 7 A I don't remember whether I was or not. I  
8 may have been.
- 9 Q Were you consulted with regard to the  
10 revisions?
- 11 A No, I don't think it would be accurate to  
12 characterize my role in this as being consulted.
- 13 Q Is that because you didn't review the  
14 transcripts?
- 15 A Right.
- 16 Q Any other reason?
- 17 A Nor had I even read the summaries.
- 18 Q Or I guess I think you earlier said you  
19 hadn't completely reviewed the transcripts; is that  
20 more accurate?
- 21 A Well, I had looked at a snatch here and  
22 there if someone directed my attention to it, but I

- 1 never read them.
- 2 Q Okay. Did anyone direct that people in  
3 your office endeavor to make revisions to the IG  
4 report or suggested revisions?
- 5 A Did anyone direct that?
- 6 Q Correct.
- 7 A Not that I'm aware of.
- 8 Q Did you request that people in your office  
9 undertake this project?
- 10 A I don't even believe that I requested that  
11 happen.
- 12 Q Did anyone request for it to happen?
- 13 A I'm not sure that anyone requested it or  
14 whether it might have been something that Steve  
15 identified as something that needed to be done and  
16 therefore did.
- 17 Q Something that he took on by himself?
- 18 A It could be.
- 19 Q Did spontaneously?
- 20 A Very well could be. Or it could be --  
21 there are any number of occasions where Steve and Bob  
22 and I, or Steve, Bob and Ed and I would sit around

1 and discuss what needs to be done now, and things  
2 would be identified and people would say what things  
3 they were going to be doing.

4 Q Did you have any discussions with the  
5 people you just mentioned about making suggested  
6 revisions to the IG report?

7 A I don't think so.

8 Q Talk to Ed about it or --

9 A I don't remember doing that. It might very  
10 well have been that the identification of the need to  
11 do it happened in a, you know, a meeting or  
12 discussion in which Ed participated. I have no  
13 recollection of that at all.

14 Q How many different suggested revisions were  
15 drafted to your knowledge?

16 A I don't know.

17 Q Can you take a guess?

18 A I have no idea. I wouldn't guess.

19 Q You don't know an approximation?

20 A I have no idea.

21 Q Were you shown more than one draft of  
22 suggested revisions?

1 A Again, I don't remember being shown this.  
2 I may have been shown it. I may have been shown one  
3 or two. I don't remember. It wasn't something I was  
4 working on.

5 Q Okay. I'd like to show you an exhibit  
6 marked -- appears to be 01495 -- looks like a  
7 chopped-up 8. It's a one-page document. Please take  
8 a moment to review that and let me know when you've  
9 had an opportunity.

10 (Witness reviewed the document.)

11 A Uh-huh.

12 Q Okay. Have you seen this document before?

13 A Yes.

14 Q Okay. When did you first see it?

15 A I don't know when I first saw it but I've  
16 seen it within the last 10 days.

17 Q Did you receive it in or around July 29th,  
18 1994?

19 A I may well have. I don't remember  
20 receiving it.

21 Q For the record, it's a one-page document  
22 dated July 29th, 1994 and reads, all caps,

1 "memorandum for Kenneth R. Schmalzbach." It's from  
2 R. Peter Rittling. Has initials next to that and  
3 then says "subject: review the OGE's final chronology  
4 of White House contacts."

5 Is your understanding what's referenced  
6 here is a final chronology?

7 A That's what it says.

8 Q But do you have an understanding as to what  
9 the final chronology was, what's being referenced  
10 here?

11 A No.

12 Q Do you have an understanding as to whether  
13 that was the chronology that was provided to the OGE?

14 A I don't know.

15 Q Okay. The first two sentences read "the  
16 OGE incorporated many of our recommended changes into  
17 the final chronology. Some of the recommended  
18 changes were typographical errors and some were  
19 substantive changes."

20 Are you aware that substantive changes were  
21 incorporated from suggestions made by your office?

22 A I don't know. I don't know what the

---

1 suggestions we made were. I don't know what the IG  
2 adopted and didn't adopt.

3 Q Did you ever speak with Francine Kerner  
4 about recommended changes that your office offered to  
5 the chronology done by the IG's office?

6 A Possibly. I don't remember doing it, but  
7 it doesn't feel like something that couldn't have  
8 possibly happened.

9 Q Would that have been a normal course of  
10 business for that to happen? If your office was  
11 doing recommended changes to the chronology, would  
12 that have been --

13 A Normal course of business with respect to  
14 what was going on last summer is a sort of  
15 noncompute.

16 Q Would that have been consistent with your  
17 relationship with Ms. Kerner during this time period?

18 A Only in the sense that I wasn't really  
19 working on the, on comparing the transcripts and the  
20 draft report.

21 Q Who in your office would have dealt with  
22 Ms. Kerner with regard to suggested changes to the



1 chronology?

2 A Possibly Stephen McHale. Possibly Peter  
3 Rittling. Possibly David Dougherty.

4 Q Do you know who did?

5 A No.

6 Q Do you know if anyone didn't?

7 A I'm sorry. That's a twister. Did I know  
8 if anyone didn't?

9 Q Yeah, if anyone, specifically someone in  
10 your office didn't have contact with her on the  
11 issue?

12 A No, I don't know.

13 Q Just trying to define the universe.

14 A No, I don't know.

15 Q So you don't have a recollection of  
16 receiving this memorandum?

17 A No.

18 Q I'd like to show you a document bears the  
19 Bates stamp 10965 it appears. Take a moment to look  
20 at that. Let me know when you've completed your  
21 review.

22 (Witness reviewed the document.)

1 A Okay.

2 MR. O'CALLAGHAN: Also in the event that it  
3 wasn't our mistake in copying it, could I ask you,  
4 I'd like to ask to have -- get a clean copy of this  
5 if one exists with that Bates stamp number. It looks  
6 like the top left corner was chopped off.

7 MR. BUCKLES: What's the number again?

8 MR. O'CALLAGHAN: Appears to be 10965.

9 MR. BUCKLES: Okay.

10 BY MR. O'CALLAGHAN:

11 Q The first line on the top of the page says  
12 "corrections" and it's underlined?

13 A Right.

14 Q Is this another page copied from your  
15 spiral notebook?

16 A Yes.

17 Q And is the writing that appears on this  
18 document your writing?

19 A Yes.

20 Q Do you know from what time period this  
21 entry came from?

22 A Yeah. It would have been either August 3rd

1 or August 5th.  
2 MR. PORTNOY: It can't be 10965.  
3 MR. O'CALLAGHAN: It might be 63.  
4 MR. PORTNOY: Yes.  
5 MR. O'CALLAGHAN: And the top left corner  
6 is missing from his too.  
7 MR. PORTNOY: However, the bottom right  
8 corner with the Bates number is slightly better than  
9 Mr. O'Callaghan's copy, sufficient to allow us to  
10 discern it's 10963.  
11 BY MR. O'CALLAGHAN:  
12 Q You said August 3rd, August 4th, is that  
13 right, that time period?  
14 A It is. I believe that these were notes  
15 that I took either at or shortly after one of  
16 Bentsen's testimony either before the House or the  
17 Senate.  
18 Q What does "corrections" refer to?  
19 A Things that he said that we needed to  
20 supplement the record.  
21 Q Okay. And could you read to me the first  
22 two lines after "corrections"?

1 A "Shared witness depositions before IG  
2 report done."  
3 Q Okay. And "before" is underlined; is that  
4 right?  
5 A Right.  
6 Q What does that refer to?  
7 A Well, it either means he said somewhere  
8 that we had shared the depositions before the report  
9 was done, or that we needed to tell the Senate that  
10 it was shared before -- he said something related to  
11 that. Either he said before or after and it needed  
12 to be corrected. Presumably in the light of what we  
13 know subsequently, since the witness depositions were  
14 given to Treasury witnesses as soon as Altman  
15 finished his testimony in the Senate, which I believe  
16 was on the 25th, and the IG, the final report did  
17 not -- wasn't delivered to the Secretary until the  
18 30th, that he had said that they were shared after  
19 and it should have been that they were shared before.  
20 Q Okay. And did you recognize this  
21 misstatement at the time that it happened?  
22 A I must have.

1 Q Did you bring it to anyone's attention?

2 A I don't remember. I mean we did what we  
3 did in terms of correcting the record.

4 MS. STERGIS: I believe the witness  
5 testified he wasn't sure whether he took the notes at  
6 the testimony or after.

7 THE WITNESS: Right.

8 MS. STERGIS: So your question is  
9 ambiguous.

10 MR. O'CALLAGHAN: Why --

11 THE WITNESS: When I wrote the note I  
12 perceived a need to supply additional information for  
13 the record.

14 MR. O'CALLAGHAN: Okay. Thanks. I don't  
15 think I made reference to the timing of the notes in  
16 the question.

17 BY MR. O'CALLAGHAN:

18 Q But thank you. I'd like to have you take a  
19 look at a document which bears the Bates stamp  
20 011810.

21 (Witness reviewed the document.)

22 A Uh-huh.

1 Q Okay. Again is this a page from your  
2 spiral notebook?

3 A Yes.

4 Q The writing that appears on it, is that  
5 yours?

6 A Yes.

7 Q It reads "Sherbourne 8-2-94. Solomon saw  
8 RA say he saw JH transcripts."

9 A Right.

10 Q It reads "Solomon saw RA say he saw JH  
11 transcripts. Cutler" -- does that say "referred  
12 Solomon to us"?

13 A Right.

14 Q What is that referencing?

15 A Trying to put it together.

16 Q Trying to put what together?

17 A What this means.

18 Q Oh, okay.

19 A It sounds to me like Jane called me to let  
20 me know that Cutler had received a question about  
21 where Altman saw Jean Hanson's transcripts because  
22 Solomon, who is presumably the AP reporter, had asked

1 Cutler that and Cutler didn't know the answer. And  
2 so Jane was calling me to tell us that Solomon would  
3 be calling us.

4 Q Did you have a reaction to that?

5 A I don't know. What do you mean did I have  
6 a reaction?

7 Q Were you surprised by the call, did the  
8 call concern you, were you happy about the call, what  
9 was your reaction?

10 A I don't recall my specific reaction. I can  
11 tell you what my reaction is now.

12 Q What is it now?

13 A It was a silly question.

14 Q My question?

15 A No, no, no. Solomon's question.

16 Q Okay. And what specifically was his  
17 question?

18 A His question was how did Altman see Jean  
19 Hanson's transcript.

20 Q And why did you think it was a silly  
21 question?

22 A Well, because it was, I guess it was -- I

1 don't know. Is silly question the right -- we had  
2 given -- after Altman finished his Senate Banking  
3 Committee deposition, and he was the last one, last  
4 Treasury witness to finish the Senate Banking  
5 Committee deposition, we had made the transcripts  
6 available to all of the witness -- all of the  
7 transcripts available to all of the witnesses.

8 Q Okay, but is the reference here that  
9 Mr. Solomon saw -- said he saw Jean Hanson's  
10 transcript while he was testifying?

11 A I actually don't know. I mean I assume  
12 that where Solomon saw Altman say something was  
13 during his testimony, either in the House or the  
14 Senate.

15 Q I'm not trying to characterize it. Let me  
16 know if you agree with it or not. Is it your view  
17 that it was okay for Mr. Altman to see Ms. Hanson's  
18 transcripts before he testified?

19 A Absolutely.

20 Q And what's your view on that?

21 A My view is that witnesses who are going  
22 before Congress to testify about their official

1 activities have a right to know before they are  
2 surprised by a Senator what it is that's going to be  
3 asked of them.

4 Q Do you know if Mr. Altman was shown -- do  
5 you actually have knowledge that Mr. Altman was shown  
6 Ms. Hanson's transcripts before he testified?

7 A I actually don't know that. I know that --  
8 I don't know for sure. I'm pretty sure his attorneys  
9 received copies of the transcripts.

10 Q Could I just show you what's been Bates  
11 stamped 016032A. Let me know when you've had a  
12 chance to review it.

13 (Witness reviewed the document.)

14 Have you seen this document before?

15 A Yes.

16 Q And when did you first see it?

17 A It seems, I may very well have seen this  
18 within the last 10 days or so.

19 Q Had you seen it before -- let me withdraw  
20 that question.

21 Do you know what this document represents?

22 A No.

1 Q Okay. Did you engage in a telephone call  
2 with Mr. -- excuse me. Let me rephrase the  
3 question.

4 Do you have knowledge that Mr. Bentsen or  
5 Secretary Bentsen met with Mr. Cutler on August 3rd  
6 at 3:07?

7 A No.

8 Q Do you know if Secretary Bentsen had a  
9 phone conversation with Mr. Cutler at 3:07 on August  
10 3rd, 1994?

11 A No.

12 Q Have you ever been told that he did?

13 A No.

14 Q Were you ever told that Secretary Bentsen  
15 had a phone conversation with Mr. Cutler at 3:55 on  
16 August 3rd, 1994?

17 A No.

18 Q Have you ever heard that?

19 A No. Not that I remember. I don't remember  
20 ever hearing that they talked.

21 Q Thank you. Mr. Schmalzbach, have you ever  
22 learned that Ms. Kerner was involved in handing over



1 transcripts to the White House counsel's office?

2 A No.

3 Q Have you ever heard that?

4 A No.

5 Q Have you ever learned that transcripts were  
6 sent over to the White House before July 23rd, 1994?

7 A No.

8 Q Have you ever heard that?

9 A No.

10 MS. STERGIS: Could I hear that question  
11 and answer again.

12 (The reporter read the record as requested.)

13 MS. STERGIS: Was there previous testimony  
14 with respect to individual counsel for White House  
15 witnesses receiving the transcripts?

16 THE WITNESS: Oh, yes, yes, I'm sorry. Let  
17 me -- I have more to add there.

18 BY MR. O'CALLAGHAN:

19 Q Okay. Please go ahead.

20 A I did understand that the Inspector  
21 General, at the request of the Office of Government  
22 Ethics, had asked individual witnesses who had been

1 deposed to review the transcripts of their  
2 depositions for accuracy. And I understood that that  
3 took place on or about July 18th. I don't know  
4 whether Francine had anything to do with it or not.

5 Q Okay. With regard to the transcripts that  
6 were handed over to the White House counsel's office  
7 on the 23rd, were the transcripts used to prepare  
8 White House witnesses other than Lloyd Cutler?

9 A I don't know.

10 Q Have you ever heard that they were?

11 A I have heard what is in those newspaper  
12 stories.

13 Q You are referring to --

14 A A series of May 1995 newspaper stories.

15 Q Have you learned that the transcripts were  
16 used in any other fashion other than --

17 A Transcripts were what?

18 Q Used in any other fashion other than  
19 helping to prepare Mr. Cutler for his testimony?

20 A No.

21 Q Do you know or have you learned whether any  
22 witness or witnesses have altered their testimony as

1 a result of their being able to review the unredacted  
2 copies of the transcripts?

3 A I have not learned that.

4 Q Have you ever heard that?

5 A There was a -- I understand there was some  
6 dustup about Ickes's testimony. I don't know what  
7 the -- and there was -- recently I read a newspaper  
8 article from the time of the dustup about it, but  
9 that's all I've ever heard about it.

10 Q Have you ever heard about alternate  
11 testimony from any other source other than newspapers  
12 or news reports?

13 A No.

14 MR. O'CALLAGHAN: Okay. I have no further  
15 questions at this time.

16 MR. PORTNOY: Okay. I'd just like to state  
17 for the record that we're going to need to continue  
18 this deposition until a time and place to be  
19 determined in consultation with Mr. O'Callaghan, the  
20 Republican staff, the Democratic staff and counsel  
21 for the witness.

22 We began this morning at 9:45. We're at

1 nearly 7:00 and I think we all agree that everyone is  
2 a little tired, and it's probably going to be less  
3 than ideal to continue at this point. And as a  
4 consequence, I'm afraid we're going to need to  
5 continue this until another time.

6 MR. O'CALLAGHAN: The majority counsel  
7 agrees that we'll continue it another time.

8 MS. STERGIS: Fine.

9 MR. O'CALLAGHAN: Thank you.

10 MR. PORTNOY: Thank you.

11 (Whereupon, at 6:52 p.m., the deposition  
12 was adjourned.)

13

1

1. -----  
16 KENNETH R. SCHMALZBACH

17

18

19

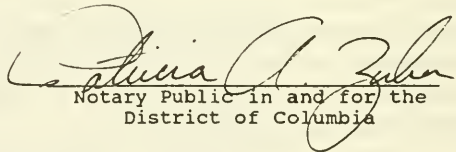
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000

Saturday  
June

18

| June | 22 | 23 | 24 | 25 |
|------|----|----|----|----|
| Mon  | 6  | 13 | 20 | 27 |
| Tue  | 7  | 14 | 21 | 28 |
| Wed  | 8  | 15 | 22 | 29 |
| Thu  | 9  | 16 | 23 | 30 |
| Fri  | 10 | 17 | 24 |    |
| Sat  | 11 | 18 | 25 |    |
| Sun  | 12 | 19 | 26 |    |

Sunday  
June

19

has notes from Sherburne  
during from FK that left may  
not be ready, JB also writes  
I will do anything

6

18

Saturday

19

Sunday





**DEPOSITION OF APRIL A. BRESLAW  
IN RE: S. RES. 120**

---

**MONDAY, OCTOBER 23, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of APRIL A. BRESLAW, called for examination pursuant to notice of deposition, at 9:55 a.m. in Room 538 of the Dirksen Senate Office Building, before DAVID L. HOFFMAN, a Notary Public within and for the District of Columbia, when were present:

MICHAEL CHERTOFF, Esq.  
Majority Special Counsel  
H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

HAMILTON P. FOX III, Esq.  
Sutherland, Asbill & Brennan  
1275 Pennsylvania Avenue, NW  
Washington, DC 20004-2404  
On behalf of the Deponent.

**ALSO PRESENT: TIMOTHY P. MITCHELL**

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## P R O C E E D I N G S

Whereupon,

APRIL A. BRESLAW

was called as a witness and, having been first duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. CHERTOFF:

Q Ms. Breslaw, before we proceed, let me just indicate to you generally speaking what the ground rules are of the deposition.

This deposition is being conducted pursuant to Senate Resolution 120, which establishes a special committee administered by the Senate Banking Committee to conduct an investigation of Whitewater Development Corporation and certain other related matters.

In connection with several of the subjects of that resolution, we are deposing you today. This deposition is in advance of public hearings. You may or may not be called to testify at the public hearings.

We'll be asking you questions under oath.

---

If you don't understand the question, let me know and I'll rephrase it. I'm going to ask you not to speculate or guess, unless I make a specific request that you do that.

The stenographer is going to prepare a record of the questions and answers which will be treated as committee confidential until the hearings begin. Once the hearings begin, some or all of the deposition may become public. You should anticipate that eventually all of it will become public.

Before the hearings you'll have a letter from the committee which will tell you when you can come with your attorney to review the deposition for purposes of making any corrections.

I should advise you, if you make corrections other than clerical or the ministerial corrections, the fact of those changes could be the subject of an additional deposition.

If you are called to testify at a public hearing, you'll be permitted to have a copy of your deposition transcript four days in advance of your testimony, provided that you agree to keep it to

1 yourself and your counsel and not disseminate it to  
2 anybody else.

3 May I ask that counsel that just put your  
4 name on the record?

5 MR. FOX: Hamilton P. Fox, III.

6 BY MR. CHERTOFF:

7 Q As with any deposition, there may be  
8 objections by your counsel or by one of us to  
9 questions. Let us get the objections out and deal  
10 with them, and then you can go ahead and answer the  
11 questions.

12 There are two grounds on which you might  
13 be instructed not to answer a question. One is on  
14 the grounds of some kind of a privilege, and the  
15 other would be on the grounds that the question  
16 exceeded the scope of the resolution.

17 In either event, we will deal with those  
18 issues if we can't resolve them here. Then if you  
19 are instructed not to answer, you shouldn't answer.  
20 The ultimate arbiter about whether something should  
21 be answered or not is the committee chairman.

22 Is there anything that I've said that you

---

1 want to ask me a question about, or anything about  
2 the proceeding you want to ask me a question about?

3 A No.

4 Q Where are you now employed?

5 A I am a permanent FDIC employee who was  
6 detailed to the RTC several years ago. Currently I  
7 remain a counsel in the RTC Professional Liabilities  
8 Section.

9 Q But you are now directly employed by the  
10 FDIC?

11 A I have always been directly employed by  
12 the FDIC. It's a bit confusing. But I work for the  
13 RTC. But my paycheck, as I understand it, comes from  
14 the FDIC.

15 Q When did you graduate from law school?

16 A 1985.

17 Q Where did you go to law school?

18 A George Washington University.

19 Q Did you start working for the government  
20 immediately after law school?

21 A Yes.

22 Q Where did you begin?

1 A I began work for the FDIC in its Dallas  
2 regional office.

3 Q What were your duties at that time?

4 A At that time, my title was regional  
5 attorney. And in the regional offices at that time,  
6 we handled bank closings. We dealt with only closed  
7 bank issues. When a bank would close, a team of  
8 people would go out to the bank, would try to make an  
9 assessment of litigation that was pending there, try  
10 to deal with deposit insurance questions that might  
11 come up.

12 And then after the bank was closed,  
13 typically the FDIC would sell assets in bulk to other  
14 institutions. We would take care of those  
15 transactional matters. We considered ourselves to be  
16 generalists.

17 We did not handle, however, what is now  
18 called professional liability matters. And by that I  
19 mean investigations and civil litigation involving  
20 former directors, officers, accountants, attorneys,  
21 anyone who provided what we would consider to be  
22 professional services to a failed institution.

---

1 So aside from that one particular area, we  
2 dealt with basically whatever came up in connection  
3 with a failed bank.

4 Q What was your next position after being a  
5 regional attorney in Dallas?

6 A I received a promotion, and transferred to  
7 Washington, D.C. as an attorney in what was then  
8 called the Directors and Officers Liability Section.

9 In fact, that was a bit of a misnomer,  
10 because what the section actually did was evaluate  
11 and, where appropriate, pursue what I've just  
12 described as professional liability claims.

13 The potential targets were a broader group  
14 than merely directors and officers.

15 Q When did you move to Washington in your  
16 new position?

17 A That would have been in January 1988.

18 Q How long did you hold that position?

19 A Until January of 1990. At that time, I  
20 was moved into the RTC Professional Liability  
21 Section. And I received a promotion to Senior  
22 Attorney at approximately that same time. I don't



1 remember the exact date.

2 Q Now at that point, when you became a  
3 Senior Attorney in the Professional Liability  
4 Section, what were your duties?

5 A Essentially they were the same as they had  
6 been in the Directors and Officers Liability Section  
7 for the FDIC. We conducted investigations of parties  
8 that we considered to be professionals. Where  
9 appropriate, I recommended that we initiate  
10 litigation. I either handled the litigation myself,  
11 or hired outside counsel to pursue it.

12 I made decisions about settlements, made  
13 recommendations, I should say, about settlements,  
14 although typically those recommendations were  
15 accepted.

16 And that's pretty much the range of it.  
17 It was really the same type of work. The main  
18 difference was, it involved failed savings and loans  
19 as opposed to failed banks.

20 Q How long did you hold that position as  
21 Senior Attorney in the Professional Liability  
22 Section?

---

10

1 A In November of 1991, I was promoted to  
2 counsel, also in the Professional Liability Section,  
3 and that is where I remain.

4 Q Now, when you were Senior Attorney, to  
5 whom did you report?

6 A At that time, my immediate supervisor was  
7 an individual named David Eisenstein. He in turn  
8 reported to an individual named John Beatty.

9 Q When you became counsel, to whom did you  
10 report?

11 A The reporting chain was the same.

12 Q Who was the head of the Professional  
13 Liability Section in November 1990?

14 A John Beatty.

15 Q Who in the chain was right below him?

16 A Below him were, I believe, three senior  
17 counsel. So the next step down in the hierarchy would  
18 have been three people, not one particular person.  
19 One of those three was David Eisenstein.

20 Q In 1991, where were you physically housed  
21 in your job?

22 A We moved a number of times. I believe --

1 I don't remember off the top of my head the dates of  
2 the move. But between January 1990 and now, the RTC  
3 Professional Liability Section was housed at one  
4 point at 801 17th Street in Washington. At another  
5 point in rented space on K Street in Washington, and  
6 then as we now are, at 1717 H Street in Washington.

7 It was always in Washington, D.C., but it  
8 was three different buildings, and I don't remember  
9 exactly when we moved.

10 Q Since you moved back to Washington from  
11 Dallas, your base of operations has continued to be  
12 Washington?

13 A That's correct.

14 Q When did you first meet Ellen Kulka?

15 A She joined the RTC in January of 1994.  
16 There was a reception in an auditorium at which she  
17 was introduced, along with the rest of the legal  
18 division. I listened to her make some opening  
19 remarks, and I believe I stood in a long reception  
20 line and shook her hand.

21 Q Was the professional liability section  
22 part of the legal division?

---

1 A Yes.

2 Q So did the head of the Professional  
3 Liability Section report to whom?

4 A Again, that has changed.

5 Q To what position does it report?

6 A To the Deputy General Counsel for  
7 litigation.

8 Q Who was that between -- which individuals  
9 occupied that position between 1991 and the end of  
10 1994?

11 A For various periods of time, the position  
12 was vacant, as best as I can recall. Richard  
13 Aboussie held that position for some period of time.  
14 I don't remember his exact dates of service.

15 And Ira Parker followed in that job,  
16 although it seems to me that his title was one level  
17 lower. I believe his title was Associate General  
18 Counsel for Litigation. But conceptually he was  
19 overseeing all RTC litigation, which included  
20 professional liability litigation and what we would  
21 characterize as commercial litigation as well.

22 In 1994, I believe in 1994, Andrew Tombach

1 was hired by Ellen Kulka, and he still serves in that  
2 position today.

3 Q As Deputy General Counsel?

4 A That's correct.

5 Q Where was he before he became Deputy  
6 General Counsel?

7 A He worked somewhere at Treasury, and I  
8 don't know what his title was there.

9 Q Do you know how long he had been at  
10 Treasury?

11 A My impression is that it's a relatively  
12 short period of time, but I really don't know.

13 Q Do you know where he was before he was at  
14 Treasury?

15 A At some point, I believe he worked at  
16 Dewey Ballantine.

17 Q Did he have a government position between  
18 the time he worked at Dewey Ballantine or some law  
19 firm and the time he went to Treasury?

20 A I don't know.

21 Q Do you know if he worked at the White  
22 House?

1 A I've never heard that suggested. I don't  
2 have personal knowledge of it.

3 Q Do you know Mr. Tombach?

4 A I've met him in the course of his work at  
5 the RTC. But I don't know him personally.

6 Q Before Ellen Kulka became general counsel,  
7 in your understanding who performed the function of  
8 general counsel at the RTC?

9 A Immediately before her it was Richard  
10 Aboussie.

11 Q And before that?

12 A Joe Jacobs.

13 Q When did you first meet Jack Ryan?

14 A He also joined the RTC in 1994. As best  
15 as I can remember it would have been February or  
16 March of 1994, in the context of making a settlement  
17 recommendation for the Pacific Savings Bank Directors  
18 and Officers Liability case.

19 Q When did you first encounter the Rose law  
20 firm?

21 A I believe that was in 1988.

22 Q How did that come about?

1 A When I transferred to the Directors and  
2 Officers Liability Section, I was assigned  
3 responsibility for a lawsuit which had already been  
4 filed against former directors and officers of the  
5 Corning Bank in Corning, Arkansas.

6 Someone prior to me had hired the Rose law  
7 firm to be our outside counsel on that case. So I  
8 began to work with them overseeing that case.

9 Q With whom particularly did you work?

10 A With Webster Hubbell and Richard Donovan.

11 Q What were their positions in the law firm?

12 A At that time, my understanding was that  
13 Rick Donovan was a senior associate, and that Hubbell  
14 was a partner. I don't recall learning anything in  
15 particular about their roles in the law firm other  
16 than that.

17 Q What kind of contact did you have with  
18 them on the case involving the Corning bank?

19 A I oversaw that case. So before they would  
20 file significant pleadings, I would have to review  
21 them and to prove them. We had a number of  
22 settlement conferences in that instance. The

1 directors and officers had liability insurance  
2 provided by National Union Fire Insurance. So we had  
3 a number of settlement conferences that involved both  
4 the insurance carrier and various of the directors  
5 and their counsel.

6 We came very close to having a trial in  
7 that case. So while they were preparing for trial,  
8 there were numerous strategic decisions that had to  
9 be made, and I had input on that.

10 Q In these instances where you were dealing  
11 with either settlement issues or trial preparation,  
12 were you dealing with Mr. Hubbell or Mr. Donovan  
13 personally?

14 A Over the telephone. They were physically  
15 located in Arkansas.

16 Q Did you yourself go to Arkansas on this  
17 case?

18 A Occasionally. It seems to me that the  
19 judge -- I believe it was Judge Howard -- held  
20 several court-ordered settlement conferences.  
21 Typically the judge will want a party to come. So I  
22 was the representative of the FDIC as the party.

1 Q About how many times would you say you  
2 were out in Arkansas on the Corning case?

3 A Four or five.

4 Q Were those one-day trips, or trips over a  
5 period of days?

6 A Either one day, or perhaps two days,  
7 mainly depending on what the airline schedules were  
8 doing.

9 Q On these trips, did you have the  
10 opportunity to become socially acquainted with Mr.  
11 Hubbell in the sense that they would take you out to  
12 dinner, or extend home hospitality, or things of that  
13 sort?

14 A I have never met any member of Mr.  
15 Hubbell's family or Mr. Donovan's family. I do not  
16 recall ever actually having dinner with anyone from  
17 the Rose law firm. I do recall occasionally going to  
18 lunch with them during a business day.

19 Under our ethics rules at the time, we  
20 were not allowed to accept any gift or lunch, food,  
21 anything from an outside contractor. So to the best  
22 of my recollection, I always paid for my own lunch.

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1 But it was always on a purely business basis.

2 Q When did you first hire the Rose law firm  
3 on a new matter, other than Corning?

4 A That would have been in 1989.

5 Q And what matter was that?

6 A Well, actually, you know what? I believe  
7 in 1988, the insurance company in the Corning matter  
8 filed a declaratory action to rescind the insurance  
9 policy. And I retained the Rose law firm to  
10 represent us in that declaratory action, which was  
11 almost a companion case to the Corning Bank case.

12 Q When is the first time you hired them to  
13 handle a matter other than one related to the Corning  
14 case?

15 A 1989.

16 Q What case was that?

17 A That was the Frost accounting malpractice  
18 case.

19 Q Putting that to one side for a moment,  
20 were there any other cases in which you ever retained  
21 or sought to retain the Rose law firm to handle a  
22 matter for the FDIC or the RTC?



1 A In, I believe, 1990, I retained the Rose  
2 law firm to handle an investigation of, I believe it  
3 was Capital Savings and Loan, which is another  
4 Arkansas failed institution. I do not know whether  
5 that investigation materialized into litigation,  
6 because that matter was subsequently transferred out  
7 to the Kansas City RTC office.

8 But I did retain the Rose firm to begin  
9 that investigation.

10 Q Without getting into confidential matters,  
11 can you tell us generally the issue that was being  
12 investigated, that you asked them to investigate?

13 A Well, it's our routine practice  
14 whenever -- frankly, on the FDIC side, whenever a  
15 bank fails to evaluate whether or not civil claims  
16 should be brought against these various categories of  
17 professionals. So there was no particular suspicion  
18 of wrongdoing.

19 But as a routine matter, we look at every  
20 institution, and every institution will have  
21 recommendations, either to go forward and file suit,  
22 or to close out investigations which for various

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1 reasons we conclude should not be taken into  
2 litigation.

3 Q Where was the Capital Bank located?

4 A Somewhere in Arkansas. I don't remember  
5 the town.

6 Q Do you remember the identity of the chief  
7 executive officer of the bank?

8 A No, I don't.

9 Q Do you know who owned the bank?

10 A No.

11 Q Why did you come to hire the Rose law firm  
12 to do that investigation?

13 A In Arkansas, as far as I can remember,  
14 there really were only two or three firms that had  
15 first of all gone through the elaborate process that  
16 we require to become certified RTC contractors. And  
17 second of all, whom we would consider qualified to do  
18 a professional liability investigation.

19 Q What's the elaborate process that's  
20 required to become an RTC contractor?

21 A I don't personally handle that, but my  
22 sense is that it's an elaborate certification process

1 to our contracting office, and again, I have to tell  
2 you I don't handle it myself. But it's something  
3 that the RTC over time has implemented.

4 This was not a process that was in effect  
5 in the FDIC in 1988 when they worked on the Corning  
6 Bank case. But over time, the RTC has implemented  
7 more and more, frankly, bureaucratic requirements on  
8 the law firms.

9 Q What were the other firms that were in  
10 Arkansas that were qualified to do RTC work in 1990?

11 A I don't know all of them. The ones that  
12 had been considered qualified to do professional  
13 liability work were the Rose law firm, Wright,  
14 Lindsay & Jennings, and I believe, Friday, Eldridge &  
15 Clark.

16 Q Did you ever hire Wright, Lindsay &  
17 Jennings or Friday, Eldridge and Clark to do RTC  
18 work?

19 A I had hired Wright, Lindsay. I had heard  
20 mixed things about the Friday, Eldridge firm. I knew  
21 one person that was very dissatisfied with their  
22 work, so I never hired them.

1 Q Let me direct your attention to the  
2 Madison Guarantee case. When did you first learn  
3 that you were going to have to retain a firm for that  
4 case?

5 A Madison had filed suit itself against its  
6 auditors, Frost and company, in 1988. So as soon as  
7 Madison was put in conservatorship -- that would have  
8 been in late February or early March of 1989 -- it  
9 became apparent that there was already this piece of  
10 professional liability litigation in the form of an  
11 accounting malpractice case.

12 So as a routine matter, it fell to me as  
13 the professional liability attorney assigned to  
14 Madison to make determination as to whether the  
15 existing counsel should be continued, or whether new  
16 counsel should be hired.

17 That was the point immediately after the  
18 institution came into conservatorship. I appreciated  
19 that I needed to make a decision about what law firm  
20 should handle that case.

21 Q What was the firm that was handling the  
22 case up to that point?

1 A The particular lawyer is named Jeffrey  
2 Gerrish. He has been in two different firms. One  
3 was called Borod & Huggins. The other had his name  
4 in it, Borod, Huggins, and Gerrish, something like  
5 that. But he's changed around firms.

6 Q What was the reason you decided not to  
7 leave the case with him?

8 A His practice area was, and as far as I  
9 know still is, representing former directors and  
10 officers, or I should say, current directors and  
11 officers, of banks and savings and loans. That's  
12 just his area of practice.

13 In the course of that, he frequently  
14 represents parties against the government. And it is  
15 my recollection that at that time -- that would have  
16 been the spring of 1989 -- he disclosed to us that he  
17 was counsel of record in, I believe it was three  
18 different matters in which the FDIC was the  
19 plaintiff.

20 So it was apparent that he was conflicted.  
21 He had three different cases in which he was directly  
22 adverse to the government. My recollection is that

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1 he felt that, since the Madison Institution was a  
2 savings and loan, and technically its insurance had  
3 come from FSLIC, the FSLIC rather than the FDIC, he  
4 constructed an argument whereby somehow there was no  
5 conflict.

6 But his argument was not persuasive to me.  
7 It's been awhile since I've looked at his  
8 correspondence. But my recollection of that  
9 situation was that, to me, it was apparent that he  
10 was adverse to the government, and that therefore it  
11 would not be appropriate to retain him to represent  
12 the government against the accountants.

13 Q Did he ask you to waive the conflict?

14 A Essentially. Again, the way he presented  
15 it was that there was no conflict. So I don't recall  
16 that he specifically said, "Yes, this is a conflict,  
17 but could you please waive it?" My recollection is  
18 that he made an argument as to why the circumstances  
19 did not constitute a conflict.

20 Q Did you consider waiving the conflict?

21 A No.

22 Q In your experience, did the RTC or the

1 FDIC ever waive a conflict?

2 A All the time.

3 Q What was the reason you didn't consider  
4 waiving a conflict in this case for the lawyer who  
5 had filed the case?

6 A Well, my recollection is that the  
7 accounting, case, the Frost case, had only been filed  
8 a few months before, sometime in the fall of 1988.  
9 So I did not perceive the situation to be one in  
10 which we had counsel that was deeply immersed in a  
11 case, and where it might be difficult to change  
12 counsel.

13 In my experience, one of the most  
14 frequently instances in which either the FDIC or the  
15 RTC will waive conflicts is when they're confronted  
16 with a situation in which changing counsel could  
17 impair the outcome of the case. And typically that  
18 is when you're at the verge of trial or at some very  
19 intricate or delicate part of the case.

20 To me it did not seem like that was the  
21 situation, with the Frost case, because it was  
22 relatively new. And so I didn't see any particular

1 need to make an exception.

2 Q How did you decide to turn to the Rose law  
3 firm?

4 A As I said, there are really fairly few  
5 firms in Arkansas even back in 1989 which had even  
6 expressed interest in working for the government. To  
7 my recollection, the process for becoming certified  
8 was much simpler in 1989. But not everybody wants to  
9 work for the government. So my recollection is that  
10 there really were only just a few firms available.

11 Q And of those few firms, was the Rose law  
12 firm the first firm you turned to?

13 A I believe that I considered Wright,  
14 Lindsay & Jennings. But I have a general  
15 recollection that someone informed me that they were  
16 representing parties adverse to the RTC in connection  
17 with Madison.

18 I don't have a clear recollection of how I  
19 got that impression. But I do have the impression,  
20 whether it was from the local people working in the  
21 conservatorship, or somewhere else, that there could  
22 be potential conflicts with them.

1 Q Did you consult with the local people in  
2 the conservatorship about which firms might be firms  
3 that could be used in the litigation?

4 A That was not my routine practice.  
5 Typically when an institution goes into  
6 conservatorship, the people who were there are the  
7 people who are gathering documents. They're sort of  
8 issues-spotting. And typically when an institution  
9 goes into conservatorship, there's a lot of phone  
10 calling back and forth as people make decisions.

11 Frankly, our business people have to make  
12 decisions about whether to allow certain bank  
13 employees to stay on for a period of time, whether  
14 that could present problems. So typically, right  
15 after an institution goes into conservatorship,  
16 there's a lot of sort of casual conversation back and  
17 forth.

18 Neither the business people nor the local  
19 RTC lawyers have ever had authority to dictate what  
20 counsel the Professional Liability Section would  
21 hire. But if they had a view, I would listen to what  
22 they had to say.

1 Q And I assume they were a useful source of  
2 information about what's going on in Arkansas?

3 A Yes, that's fair.

4 Q Did you find when you were handling cases  
5 in Arkansas that, because of the comparatively small  
6 number of firms that were available to handle RTC  
7 work and the physical size of the state, that the  
8 issue of conflicts was something you had to wrestle  
9 with as a pretty difficult matter?

10 A Well, it came up from time to time. But  
11 frankly, Texas is a big state. And we had, I would  
12 say, more problems sorting through conflicts issues  
13 in Texas because of the sheer number of failed  
14 institutions there, and in my opinion sort of the  
15 relatively casual attitude there about these things.

16 Q When you were making the decision about  
17 counsel to retain in the Madison Guarantee case, you  
18 were familiar, I take it, with who the prior  
19 management of the institution had been?

20 A Only in a very abbreviated way. In the  
21 first quarter of 1989, I believe, 250 or so savings  
22 and loans were placed in conservatorship. And during



1 that period of time, I was still in the FDIC  
2 Directors and Officers Liability Section. We had a  
3 very small staff there.

4 And for some reason, which frankly I have  
5 never understood, it was decided that the FDIC would  
6 begin to take responsibility for these savings and  
7 loans as they were failing in early 1989, even before  
8 FIRREA was passed in August of 1989, which created  
9 the RTC.

10 I tell you all this because I want you to  
11 understand that during that particular timeframe, I  
12 was being assigned five to ten new savings and loans  
13 a week. It was just a shocking amount of incoming  
14 responsibility.

15 So really, the best I could do during that  
16 period of time was read a summary of the supervisory  
17 material that would have been submitted to the  
18 authorities making the decision to close the  
19 institution, and typically those supervisory  
20 memoranda would have a paragraph or two about the  
21 people controlling the institution, but not anything  
22 in any great detail.

1 And in the context of Madison, it did come  
2 to the surface very quickly that there was this  
3 accounting malpractice case that was clearly within  
4 my area of responsibility. The former outside  
5 counsel, Jeffrey Gerrish, had filed a suit in state  
6 court. We wanted to move it to federal court. And  
7 at that time, there was a very fast deadline for us  
8 to do that.

9 So my perception at the time was, I had an  
10 ongoing lawsuit. My recollection is that at that  
11 time, we believed we had 30 days to get the lawsuit  
12 removed. So we had to substitute counsel and get it  
13 removed. So all this was happening very quickly.  
14 And so I really didn't know very much about the  
15 institution.

16 Q Why did you have to substitute counsel  
17 within 30 days to get it removed?

18 A Well, if I started having Gerrish do work  
19 for me, then somebody was going to have to pay his  
20 bill. So if I permitted Gerrish to just start with  
21 the first task, then I would have essentially been  
22 waiving the conflict and letting him work for me.

1 Q Are you telling us that you couldn't have  
2 said to Mr. Gerrish, "Well, look, we have a deadline.  
3 I'd like you to continue to handle it while we sort  
4 out the issue of who's going to take over the  
5 representation"?

6 A I believe I could have done that. But I  
7 did not see any need to do that. Even now as we  
8 discuss it, it troubles me to think about starting a  
9 pattern with a lawyer who has disclosed clear  
10 conflicts. It just seems unnecessary, and it seems  
11 like it gets into more difficulty.

12 Q So because of your decision that you  
13 didn't want to have Mr. Gerrish continue, even so  
14 long as is necessary to make sure the case was  
15 removed, is it your testimony that you felt under  
16 time pressure to select a new counsel?

17 A Yes.

18 Q Who did you actually contact at the Rose  
19 law firm in order to determine whether they would be  
20 suitable?

21 A I do not have a specific recollection.  
22 But I believe I would have called Web Hubbell,

1 because he was a partner who had worked on the  
2 Corning case, and typically I would call a partner in  
3 a law firm about a new referral, rather than an  
4 associate.

5 Q Was part of your job in dealing with these  
6 failed banks in the professional liability lawsuits  
7 to examine whether there were professionals or  
8 individuals who ought to be pursued by the legal  
9 entity?

10 A Yes. Together with a unit that's been  
11 called the Office of Investigations, we did routinely  
12 look at all the categories of professionals to make  
13 those decisions.

14 Q Did you do that with respect to Madison?

15 A Yes.

16 Q Which professionals did you look at?

17 A We looked at directors and officers. We  
18 looked at attorneys. I don't recall whether we had a  
19 specific inquiry as to appraisers. Today that would  
20 be part of the routine practice. I don't remember in  
21 1989 whether we did that or not.

22 Q With respect to attorneys, how did you go

1 about determining whether there were attorneys who  
2 should be pursued?

3 A What we would have done -- and the first  
4 work on this would have been done by the FDIC  
5 investigators -- would have been to obtain a list of  
6 counsel retained by the institution -- again, this  
7 would have been the job of the investigators rather  
8 than by me -- to interview personnel at the bank to  
9 see if there was any question about prior  
10 representation, any matter in which there was any  
11 suggestion there might have been a problem.

12 Because the type of suit we would have  
13 been pursuing if we did pursue one would have been a  
14 malpractice case. So obviously the investigators  
15 would want to talk to people in the bank to see if  
16 they thought there was anything wrong.

17 Q Was there a particular investigator or  
18 group of investigators assigned to each institution?

19 A There was a particular person, yes.

20 Q Was there a particular person assigned to  
21 Madison?

22 A Yes.

1 Q Who was that?

2 A His name was Michael Hammerley.

3 Q Was that person also involved in assisting  
4 you or assisting the law firm in the handling of the  
5 Frost litigation?

6 A To some extent. Because the Frost case  
7 was an accounting malpractice case, that was  
8 perceived and still is perceived to be a kind of  
9 matter which requires special expertise. There was  
10 an individual named Lee Sorensen who was a CPA, I  
11 guess still is a CPA as far as I know, who was in the  
12 investigations office who was particularly assigned  
13 to work to help me in the Rose law firm with the  
14 Frost accounting case, because it involved obviously  
15 accounting issues.

16 Q Was Mr. Hammerley involved at all in  
17 either helping you or helping the Rose law firm?

18 A I don't recall specifically. Typically  
19 somebody in a more sort of general investigative job  
20 would have tried to track down records in the bank.  
21 They would get custody of all the bank's records and  
22 try to make inventories of them.

1           So although I don't have a specific  
2 recollection of Hammerley working on this, it seems  
3 to me that if anyone was looking for a particular  
4 record, they would probably turn to him to see if he  
5 could find it.

6           Q   Likewise, is it fair to say in his  
7 exploration of other professionals that might be  
8 sued, he would be interested in information that was  
9 generated in the course of the litigation against  
10 Frost?

11          A   Yes.

12          Q   Did Mr. Hammerley, to your knowledge, ever  
13 obtain a list of the attorneys who have been retained  
14 by the Madison Guarantee Bank?

15          A   I don't recall. I would think that that  
16 was his job, to do that. And I do recall that he  
17 submitted what he titled a Preliminary Findings  
18 Report, in which he made sort of a first-cut  
19 recommendations. And my recollection is that he did  
20 not recommend taking any further steps to look into  
21 attorney malpractice.

22          Q   When you contacted Mr. Hubbell -- let me

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1   withdraw the question.

2           When you contacted the Rose law firm about  
3 taking on the representation, did you have a  
4 prescribed form or some set of preliminary questions  
5 you would ask them in order to determine the  
6 suitability of the firm to handle the matter?

7          A   No.

8          Q   Did you ask them to check conflicts?

9          A   I don't remember asking them to do that.  
10 Obviously I was conscious of conflicts issues because  
11 that was the reason I felt Mr. Gerrish should be  
12 replaced.

13          Q   And that was also the reason you decided  
14 not to use Wright, Lindsay & Jennings?

15          A   Yes.

16          Q   So it would have made sense for you in  
17 dealing with the Rose law firm to ascertain that they  
18 didn't have any conflicts?

19          A   That's right.

20          Q   Would you agree with me that the firm's  
21 representation of Madison Guarantee would have  
22 constituted such a conflict?

1 A No.

2 Q So you would not have automatically  
3 excluded them if they had represented Madison  
4 Guarantee before?

5 A Not only would I not have excluded them,  
6 but the FDIC and RTC would not have required that  
7 they be excluded.

8 Q Under what circumstances would you regard  
9 a prior representation by a law firm of an  
10 institution as something that would disable them from  
11 handling a lawsuit like the one against Frost?

12 A It's fairly rare, because as a legal  
13 matter, the RTC succeeds to the interest of the bank  
14 or the savings and loan. So we are the bank or the  
15 savings and loan. So it is fairly frequent that  
16 counsel that represented the bank and the savings and  
17 loan is perfectly capable of representing us as the  
18 bank or savings and loan's successor.

19 If there was a situation in which not only  
20 the bank was involved, but perhaps directors and  
21 officers -- in other words, hypothetically, if there  
22 was some type of lender liability litigation in which

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1 the bank itself was sued, and maybe particular  
2 officers, in that instance, I think I would have a  
3 question about whether it would be appropriate to  
4 continue using counsel that represented both the bank  
5 and officers.

6 To my recollection there was no such  
7 situation like that in Madison.

8 Q Before hiring a firm to represent an  
9 institution in subsequent litigation by the RTC  
10 against another professional, would you want to  
11 determine first that those lawyers themselves didn't  
12 have exposure to potential malpractice litigation?

13 A Sure.

14 Q Did you do that with respect to Rose and  
15 Madison?

16 A I guess I would consider it to be the law  
17 firm's responsibility to tell me as a potential  
18 client whether there was anything out there that  
19 could compromise their ability to represent us. And  
20 so, while I do not specifically recall saying to  
21 anyone, Mr. Hubbell or anyone else, "So do you think  
22 you're going to be sued for malpractice in any



1 connection?"

2 I would expect that he knew that he had  
3 represented the institution previously, that he would  
4 have disclosed that to me. I do not believe that  
5 would have been a reason to refuse to hire him. But  
6 I would consider it to be his responsibility to tell  
7 me about anything that could even potentially cause a  
8 problem.

9 Q Did he ever tell you about anything that  
10 could potentially cause a problem?

11 A He did not volunteer it. In roughly June  
12 of 1989, I received information from an individual  
13 named Paul Jeddeloh, who was and maybe still is an  
14 RTC attorney. He was one of the people who was out  
15 in the field.

16 The suggestion was that Mr. Hubbell was  
17 related by marriage, and I suppose still is related  
18 by marriage, to Seth Ward. And Mr. Ward had various  
19 business dealings with Madison, some of which had led  
20 to litigation, in my recollection, that Mr. Ward had  
21 actually obtained a judgment against Madison which  
22 the RTC was later able to overturn on appeal.

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1 So my general recollection is that  
2 Jeddeloh informed me about this family relationship,  
3 and that I contacted Hubbell to ask him about it.  
4 And at that point, he confirmed that he was related  
5 by marriage to the Ward family. But he told me that  
6 he did not represent Ward. And my recollection of  
7 the conversation is that he told me, not only that he  
8 did not represent Ward, but that he would not  
9 represent Ward in the future.

10 Q Did you ask him why he hadn't mentioned  
11 this at the time you retained the firm?

12 A I don't specifically remember saying that.  
13 But I generally recall being irritated that it had  
14 not been disclosed initially.

15 Q Did you say to him, "Is there anything  
16 else I should know about?"

17 A I don't recall saying that. I guess I  
18 would have assumed that that would be implicit in the  
19 request for follow-up information about the Ward  
20 family.

21 Q What happened to the case against Frost?

22 A We continued to litigate it for almost two

1 years. Then it was settled in the spring of 1991.

2 Q For how much money?

3 A I believe it was \$1,025,000.

4 Q Who made the decision to accept the  
5 settlement?

6 A That would have been William Roelle and  
7 Joel Jacobs.

8 Q Who's Joel Jacobs?

9 A He was at the time the general counsel of  
10 the RTC.

11 Q And what phase of the litigation was the  
12 case against Frost at the time of settlement?

13 A We were nearing trial. It seems to me  
14 that we had had one trial sitting that was put off.  
15 And it seems to me that we were nearing the end of  
16 discovery. I don't recall specifically when the  
17 trial date would have been set. But in that district  
18 they seemed to have a practice of actually setting  
19 the trial date, even if it's three years away, to  
20 give parties sort of a deadline to work towards.

21 So it seems to me that we had a trial  
22 sitting, and that we were virtually finished with

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1 discovery.

2 Q Were you keeping up with the discovery in  
3 general terms during the course of the case?

4 A "General terms" is a fair way to put it.  
5 I believe I only attended the expert depositions. I  
6 was not regularly attending -- well, let me be clear.  
7 The only depositions that I attended were the expert  
8 depositions. I was not regularly even receiving  
9 copies of transcripts. I was occasionally receiving  
10 summaries of transcripts.

11 But again, because the RTC continued to be  
12 enormously busy, and we continued to be understaffed,  
13 that part of the case, which is typically very time-  
14 consuming, is something that I did not routinely  
15 participate in.

16 I expected to be informed if something  
17 significant came to light in the course of a  
18 deposition.

19 Q What did Frost raise as a defense?

20 A I think the main defense that they raised  
21 was causation. I think their primary position was  
22 that, even if the audits had been done properly, that

1 this bank would have made the losing loans, the loans  
2 that lost money anyway, and therefore there would not  
3 have been damages, or there would have been damages  
4 anyway -- excuse me.

5 Q Did they raise the issue that principals  
6 of the bank, at least early on in the bank's history,  
7 in the early and mid-80s were themselves deceiving  
8 the auditors?

9 A I don't recall that specifically being  
10 raised as a defense. I don't recall their moving for  
11 summary judgment, which would have been an obvious  
12 time for them to put all that out there.

13 Q In the course of discovery, was there  
14 examination of whether the principals of the bank  
15 were themselves deceiving the auditors?

16 A To the best of my recollection, the  
17 principals in the bank were deposed. That would be  
18 routine in that kind of situation. They would be  
19 obvious witnesses. I don't recall that particular  
20 suggestion being made.

21 But as I explained, I did not attend  
22 anyone else's deposition besides the experts. And I

1 don't recall anyone from the Rose law firm  
2 telephoning me and saying, "Gee, it looks like from  
3 the line of questioning in this previous deposition  
4 that they're looking at this kind of defense. What  
5 can we do to respond to it?" I don't recall ever  
6 having that particular conversation with him.

7 Q Now, you indicated that your recollection  
8 is that at least one of the defenses raised by the  
9 accounting firm was that the investments or the loans  
10 would have been losing loans in any event, whatever  
11 the state of them. Am I stating that correctly?

12 A I probably said it in an inarticulate way.  
13 I think that their point was that, even if the bank  
14 had gotten audits that said, "Look, your real estate  
15 portfolio, for example, is in terrible shape. Your  
16 process for making real estate loans, for example, is  
17 lousy.

18 "We think you need to reserve a jillion  
19 dollars against possible losses here," I believe the  
20 accountants would say that even if they had been  
21 very, very conservative in their audit, and really  
22 criticized what was already on the books, that that

1 criticism would not have caused the individuals  
2 running this bank to do anything any different in the  
3 future.

4 The damages in these accounting cases  
5 typically are bad loans made after a defective audit  
6 is received, on the theory that just the opposite --  
7 in other words, we would argue that if an audit had  
8 been done properly, that an institution would take  
9 that information into account, and subsequently make  
10 different lending or investment decisions.

11 Q So the accountants were actually putting  
12 at issue the quality of the loans that had been made  
13 by Madison Guarantee?

14 A Yes.

15 Q Did you discuss that with people at the  
16 Rose law firm?

17 A Well, this kind of defense is fairly  
18 typical when you're dealing with an institution that  
19 has failed anyway. I mean, obviously there was a  
20 problem, or the institution would not have become  
21 insolvent.

22 I do believe that Rick Donovan and I had

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1 several conversations about how to deal with the  
2 causation issue. And I believe that our idea was to  
3 try to get people from the Federal Home Loan Bank  
4 Board, which was the regulatory authority which  
5 supervised Madison while it was open.

6 We were hoping we'd be able to get  
7 somebody from the Federal Home Loan Bank Board to  
8 testify that, if the audits had been done properly,  
9 and were very critical of the bank, that the  
10 examiners or the federal officials would have stepped  
11 in and would have said, "All right. Either you're  
12 restricted from making these kinds of loans anymore,"  
13 or, worst-case scenario, actually declared the  
14 institution insolvent, and closed it.

15 But that some form of regulatory action  
16 would have occurred in response to what we would  
17 characterize as accurate or more critical audits.

18 Q After the case against Frost was settled,  
19 when was the next time you became involved in  
20 anything to do with Madison Guarantee?

21 A Well, as I frankly know from the public  
22 hearing before the House Banking Committee, there was

1 a memo, or maybe two from me from the spring of 1992  
2 which were clearly intended to provide a response to  
3 press inquiries about the Rose law firm's alleged  
4 prior representation of Madison.

5 Those inquiries came in very quickly. I'm  
6 sure that in your experience you've dealt with press  
7 reports, or I'm sure you understand that when the  
8 press calls in with a question, an answer needs to be  
9 given to them fairly fast.

10 This is not a long-term project. This is  
11 something that happens very quickly. An inquiry  
12 comes in. In our case, our press office will try to  
13 find someone in the organization who may have some  
14 information, and is responsive, and then will try to  
15 use that information to provide a response to the  
16 press very fast.

17 But from my perspective as someone who was  
18 asked for some information in response to this press  
19 inquiry, it was something that happened very fast.  
20 It was not something that I would consider a  
21 significant project, but that I suppose does  
22 represent -- I can't remember how you phrased the

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1 question -- but an issue that came up in connection  
2 with Madison.

3 Q So you were contacted by the press office?

4 A I was not, excuse me.

5 Q You were contacted by the press office  
6 concerning some newspaper articles concerning whether  
7 the Rose law firm had had some conflict in handling  
8 this RTC litigation?

9 A I don't remember exactly how the question  
10 was phrased to me. As best as I can recall, the  
11 suggestion that the Rose firm had represented Madison  
12 previously was being raised. And I don't remember  
13 whether the word "conflict" was actually used.

14 Q Was there a suggestion that there was a  
15 problem or an impropriety in that?

16 A Yes, that was the tone of it.

17 Q And of course, this was in the spring of  
18 1992, when you understood that Bill Clinton was a  
19 candidate for president?

20 A Right.

21 Q So you understood this was likely to  
22 become a high profile issue because it was emerging



1 in the context of presidential politics, right?

2 A That's correct.

3 Q Do you remember whether the newspapers or  
4 the media that were making the inquiries were trade  
5 publications, or were they national general news  
6 publications?

7 A Again, as you correctly stated, the  
8 inquiry to me was not from a particular reporter. I  
9 was contacted by the RTC press office, and I don't  
10 remember who they particularly were dealing with.

11 Q Did you read an article in the paper about  
12 it?

13 A I recall some time in the course of the  
14 presidential campaign reading an article in the  
15 Washington Post, which dealt with the Rose law firm  
16 itself.

17 I think it stays in my mind because I  
18 think Hubbell was quoted several times describing the  
19 Rose law firm, and it was one of the rare times in my  
20 life that I've actually known someone who was  
21 important enough to be interviewed extensively by the  
22 Washington Post.

1 So I recall reading that article. I don't  
2 remember whether that particular article dealt with  
3 prior representation of Madison or not. But the fact  
4 that Hubbell was at the Rose firm, and was obviously  
5 involved in the presidential campaign in some way or  
6 other, and Mrs. Clinton was a partner at the Rose  
7 firm, had drawn the Rose law firm into the spotlight  
8 a bit.

9 Q Were you aware, at least in the spring of  
10 1992 when you got this inquiry from the press office,  
11 that the Rose law firm was being put into the  
12 spotlight for its handling of the matter which you  
13 would be responsible for?

14 A No, because my sense -- and this is really  
15 a vague recollection -- is that the questions were  
16 about whether -- and I want to say that to me at that  
17 time it was really a question. It was not entirely  
18 clear to me that the firm had actually represented  
19 Madison before that.

20 But it seems to me that the questions that  
21 were being raised were about the law firm and perhaps  
22 Mrs. Clinton's involvement with Madison before it

1 failed, and not with respect to the Frost case, or  
2 anything to do with the accountants after the  
3 institution failed, which was the project I had  
4 worked on.

5 Q But at least as of the spring of 1992, you  
6 knew that in the context of a presidential campaign,  
7 the press was beginning to focus on an institution  
8 and a law firm with which you had had professional  
9 dealings, right?

10 A Yes.

11 Q And that was something you took notice of?

12 A Yes.

13 Q Because as you indicated earlier, that's a  
14 very unusual event in the life of most people, most  
15 attorneys?

16 A Right.

17 Q After this response to the press inquiry,  
18 what is the next contact or involvement you had?

19 MR. FOX: If you're moving into another  
20 area, could we just take five minutes?

21 MR. CHERTOFF: Oh, sure.

22 (Recess.)

1 MR. CHERTOFF: Back on the record.

2 BY MR. CHERTOFF:

3 Q Ms. Breslaw, after the press inquiry of  
4 the spring of 1992, what was next involvement you had  
5 with anything to do with the Madison case?

6 A It seems to me that in the summer of 1993,  
7 I received a request for copies of my then-closed  
8 files from Julie Yanda in our Kansas City office.

9 Q What position did Julie Yanda hold?

10 A Julie was, and as far as I know still is,  
11 the section chief of our Kansas City office.

12 Q How does she relate to you within the  
13 chain of command?

14 A Well, actually, we report sort of in  
15 different -- she reports to Tom Heinz. The reason  
16 I'm pausing right now is that actually they have done  
17 further reorganizations recently which will not take  
18 effect until the end of the year. So I want to be  
19 clear about what the situation was in the summer of  
20 1993.

21 At that time, I would say that she and I  
22 were sort of equals. I reported to David Eisenstein,

1 and then to Tom Heinz. And my recollection is that  
2 she also reported to David Eisenstein, and then Tom  
3 Heinz.

4 Q What was the request you got from her?

5 A As best as I can recall, she asked for  
6 copies of basically all the files that I had on  
7 Madison in order to be able to respond to the Freedom  
8 of Information Act requests, and to help someone  
9 prepare criminal referrals.

10 Q Had you previously been asked to provide  
11 records of your work as a POS lawyer in connection  
12 with the preparation of criminal referrals for other  
13 matters?

14 A It isn't really my work that was being  
15 requested. The files for Madison primarily  
16 consisted, from my perspective, of pleading files  
17 from the Frost accounting case. There were some  
18 reports from Mike Hammerley, which we've discussed,  
19 which generally covered issues in the institution.  
20 There would have been bank examinations.

21 But the portion of the files that  
22 constituted my work would have been really a very

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1 small number of documents, recommendations to settle  
2 the accounting case, and I suppose a recommendation  
3 not to go forward with director and officer claims  
4 for lack of cost effectiveness.

5 Q Now, director and officer claims were  
6 claims against former directors and officers of the  
7 institution?

8 A That's correct.

9 Q Was one of the directors against whom a  
10 possible claim was considered Mr. McDougall?

11 A He would have been in the target group,  
12 yes.

13 Q Do you remember who else was in the target  
14 group?

15 A No.

16 Q Did Mr. Hubbell at the time, as I say, in  
17 the period before he came to Washington while he was  
18 at the Rose law firm and while he was handling the  
19 Frost litigation, even tell you that his firm had  
20 represented Mr. McDougall personally in any matters?

21 A No.

22 Q I just want to still keep your attention

1 focused in the period between the spring of '92 when  
2 you got the press inquiry, and what you've now said  
3 is the summer of '93 when you get this request for  
4 the files. Had you in fact gotten another request or  
5 another inquiry about your work on Madison in the  
6 fall of 1992?

7 A I don't have a particular recollection of  
8 it. But it seems to me that this summer, the summer  
9 of 1995, when I was deposed on the House Banking  
10 Committee side, at that time I was shown some e-mails  
11 between Julie Yanda and myself.

12 There's a reference in there somewhere to  
13 a previous inquiry. I don't have a clear  
14 recollection of the previous inquiry. But it's  
15 possible that somebody had asked for copies of  
16 things. That does happen from time to time.

17 Q Was there a request for information from  
18 you in the fall of 1992 in connection with a criminal  
19 referral that was being prepared at that time?

20 A I don't believe so, no.

21 Q In 1993, when you got this request for  
22 information in the summer, in connection with

1 responding to FOIA requests, also in connection with  
2 the possibility of additional criminal referrals,  
3 what was your reaction?

4 A Basically neutral. My recollection is  
5 that the request from Julie Yanda was presented in a  
6 very casual way. And if anything, it minimized the  
7 importance of the transmission of the files.

8 I don't remember Julie's exact comments.  
9 But the sense of it was that Julie really didn't  
10 think it was necessary to even get my files, but that  
11 other people wanted them. So if I had time, could I  
12 please get her copies of files?

13 Q Did she tell you what other people were  
14 interested in having them?

15 A I don't recall her specifically mentioning  
16 anyone. I probably would have assumed that it was  
17 people in the investigations unit in Kansas, because  
18 those are people who typically do generate criminal  
19 referrals. I don't recall having a specific  
20 conversation about it.

21 Q Were you concerned in August of 1993 that  
22 the consequence of your turning the materials over to

1 Ms. Yanda and the people in Kansas City was that  
2 someone would second-guess your decisions in the  
3 Frost litigation?

4 A No.

5 Q Were you concerned that they might raise  
6 questions about the decisions you had made in the  
7 Frost litigation?

8 A No.

9 Q Did you believe the only reason to go back  
10 to a closed case was to questions the decisions that  
11 were made before it?

12 A No. Obviously I was being told in the  
13 summer of '93 that people were working on criminal  
14 referrals, and that my files, which dealt with the  
15 accounting case, might be relevant or contain  
16 information about possible witnesses, something like  
17 that.

18 So I guess my sense of it at the time was  
19 that the criminal referral project had nothing to do  
20 with me personally, and was not intended to reopen  
21 anything, but to do a new project, which was prepare  
22 criminal referrals and submit them.

1 Q Did you have a meeting in March 1994 with  
2 Ms. Kulka in which you discussed with her the subject  
3 of this request in August 1993 for records?

4 A Among other things.

5 Q In the course of the meeting, did you say  
6 to her that the only reason to go back to a closed  
7 case was to question decisions that were made before?

8 A I believe what that's in reference to is  
9 an additional project which the Kansas City  
10 investigators conducted during the fall of 1993.  
11 That project was some form of review of civil matters  
12 which led to a report submitted in December of 1993  
13 under Richard Ioria's signature.

14 At the time my files were requested in the  
15 summer of 1993, I was told that my files were  
16 necessary to support criminal referrals, and to deal  
17 with Freedom of Information Act requests. I was not  
18 told at that time that an additional purpose for  
19 taking my files was that somebody was going to go  
20 back and review something to do with civil claims.

21 So by the time I had the meeting with Ms.  
22 Kulka in the spring of 1994, I was aware of the



1 additional project that the Kansas investigators had  
2 done, because I had seen Ioria's reports dated  
3 December 1993. And it was that project that raised  
4 questions in my mind.

5 Q When did you first learn that someone was  
6 examining the question of the handling of the  
7 conflict of interest issue, or the Frost litigation,  
8 from the standpoint of revisiting the civil case?

9 A There are I think at least two issues  
10 there. The conflict of interest or potential  
11 conflict of interest issue is, I believe, a question  
12 about whether the Rose law firm properly made  
13 disclosures when it was retained to work on the  
14 accounting case.

15 The Rose firm was retained, as we know, in  
16 March of 1989. At that time, the RTC had not been  
17 formed. In fact, the Rose firm was retained by me as  
18 an employee of the FDIC. And so the FDIC as  
19 personified by Jack Smith, who was and is a deputy  
20 general counsel in the FDIC Legal Division had begun  
21 an inquiry into the Rose law firm's disclosures to  
22 the FDIC when it was hired.

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1 My recollection is that Jack Smith began  
2 that FDIC project in November 1993. That whole  
3 project is distinct from a review of whether people  
4 who worked for Madison when it was open, directors  
5 and officers or attorneys, committed some type of  
6 malpractice or breach of a fiduciary duty when  
7 Madison was open.

8 The investigators in Kansas seemed to  
9 muddy these two inquiries. And it's been a long time  
10 since I've seen the report issued in December of  
11 1993. My recollection is that their primary focus  
12 was on what happened at Madison before it failed, but  
13 that there was passing mention of the fact that the  
14 Rose law firm had represented the government in the  
15 accounting case.

16 And to the best of my recollection, they  
17 concluded in a rather abbreviated way without much  
18 analysis, that there was no problem with the Rose  
19 firm representing us in the accounting case.

20 Q When did you first learn that the Kansas  
21 City investigators were reviewing the question of  
22 whether there should have been, or whether there was

1 liability on the part of the directors and officers  
2 in a civil context at Madison?

3 A I believe that in either late December --  
4 or let me say either late December 1993 or January of  
5 1994, Tom Heinz showed me the report that Ioria had  
6 issued in December of 1993. I don't remember the  
7 exact date.

8 At that time, I believe both Tom Heinz and  
9 I were concerned because the report showed that the  
10 Kansas investigators had made some attempt to go back  
11 and assess whether civil claims should be brought  
12 against former directors and officers during the  
13 timeframe that they did that project, which would  
14 have been the fall of 1993.

15 The tort statute of limitations had  
16 clearly expired, and so we were concerned that they  
17 had essentially wasted government resources to go  
18 back and look at something which really could not be  
19 pursued at that time. There would be, as far as we  
20 could tell, an absolute defense to any claim we would  
21 bring.

22 So I think the sort of focus of our

1 concern was that they had done a project without, as  
2 far as we knew, input from the professional liability  
3 lawyers, which had obviously taken them away from  
4 other projects, which could lead to meritorious  
5 claims, or claims that could be pursued without  
6 having an obvious defense against them.

7 Q When you were requested in August to  
8 furnish those documents, did you complain to Ms.  
9 Yanda about it?

10 A I don't recall particularly complaining to  
11 Ms. Yanda. The files were closed because, as we've  
12 discussed, the accounting cases had been settled in  
13 1991, and they had been stored in FDIC closed file  
14 space, not in my immediate office.

15 So that there was a certain amount of  
16 bureaucratic paperwork and effort to be gone through  
17 to find the files, and then have the files copies,  
18 and then have them sent. So it was a project that  
19 was not going to be done immediately. But it could  
20 be done. And I did ask my secretary to get started  
21 doing it.

22 Q Did you express irritation to Ms. Yanda

1 about the request?

2 A I don't remember doing that.

3 Q I want to read you a portion of an e-mail  
4 which is at Bates number House TH0726.

5 MR. FOX: Can I see it, please?

6 MR. CHERTOFF: I'm going to read a portion  
7 to reflect your recollection, so I'm not going to  
8 show it to her.

9 MR. FOX: I want to see the whole thing in  
10 context.

11 MR. CHERTOFF: As you know, Mr. Fox, I'm  
12 entitled to refresh the witness's recollection by  
13 singing a song or reading from a laundry list.

14 MR. FOX: I'm suggesting it would be  
15 better if she see the whole thing, so she can see it  
16 in context. If you want to quote, examine her  
17 without giving her access to the document, the record  
18 will reflect that's what you're doing.

19 MR. CHERTOFF: The record will reflect  
20 exactly what I'm doing.

21 MR. KRAVITZ: I think you should sing a  
22 song.

1 (Laughter.)

2 MR. CHERTOFF: I don't think I'd want to  
3 visit that on you at this point.

4 BY MR. CHERTOFF:

5 Q It's an e-mail directed to you from Ms.  
6 Yanda, Re: Madison, dated Tuesday, July 20, 1993:  
7 "Thanks for the offer. Just so you'll understand, I  
8 am not THE ONE BEHIND THIS. JT has directed me to  
9 make sure we're ready when and if the criminal  
10 referrals generate additional inquiries on the civil  
11 side.

12 "I need whatever you have in storage.  
13 Please, please understand that I am not, NOT, pushing  
14 this ship. I am really sorry about having to bother  
15 you with this. I just don't know where else to turn.

16 "Thanks. Let me know if I can do anything  
17 to take the burden of securing these files off your  
18 shoulders."

19 That's the entirety of the e-mail. Does  
20 that refresh your recollection that you had expressed  
21 irritation to Ms. Yanda?

22 A No.

1 Q Did you tell Ms. Yanda that you wondered  
2 why it was necessary to get these records, since the  
3 statute of limitations period for civil claims had  
4 passed?

5 A I don't remember particularly saying that  
6 to her, because the context in the summer of 1993  
7 was, as I think is reflected in her e-mail,  
8 preparation of criminal referrals, and ability to  
9 respond to outside inquiries, possibly about criminal  
10 referrals, but possibly generally about Madison.

11 So at that time, I did not understand that  
12 anyone was going to go back and look at closed civil  
13 claims.

14 Q Did you have a sense in August of 1993  
15 that press focus on the issue of Madison and Rose  
16 might turn to some degree to involve your decisions  
17 regarding whether claims had been pursued or not  
18 pursued, or with respect to the decision to hire the  
19 Rose law firm?

20 A It's difficult at this point to be clear  
21 about when I learned different things. As best as I  
22 can recall, now in 1995, I did not perceive in the

1 summer of 1993 that questions would be raised about  
2 the items that you mentioned. Again, in 1993, Mr.  
3 Clinton had already been elected to the White House,  
4 so that presidential press inquiries had of course  
5 subsided.

6 And I do not recall that in the summer of  
7 1993, there was even yet press coverage of possible  
8 criminal referrals. As best as I can recall, that  
9 started in the fall of 1993.

10 Q When Ms. Yanda told you that one of the  
11 reasons they needed these files was to deal with FOIA  
12 requests, did that indicate to you that there was  
13 media interest in the issue of Madison and Rose?

14 A It's hard to say. It is true that the  
15 press uses the Freedom of Information Act to get  
16 information, but so do citizens. We have people  
17 making FOIA requests all the time.

18 Q That wasn't my question. My question was  
19 whether in this context, given what you had  
20 experienced in the spring of 1992, and given the fact  
21 that the First Lady was a former partner of the Rose  
22 law firm, when you got the request from Ms. Yanda for

1 information, in part to do with FOIA requests, did it  
2 cause you to think that the press was going to begin  
3 to scrutinize Rose and Madison and, among other  
4 things, the handling of those issues by you with the  
5 RTC?

6 A No. We never had a detailed discussion  
7 about how the targets of criminal referrals would be,  
8 or what the subjects would be.

9 Q Maybe I'm not clear.

10 MR. FOX: She answered the question.

11 MR. CHERTOFF: I'm not asking about  
12 criminal referrals.

13 BY MR. CHERTOFF:

14 Q I'm asking you whether, when you got a  
15 request from Ms. Yanda to furnish material, in part  
16 of deal with FOIA requests, did it cause you to think  
17 that the issue of the Rose law firm, Madison  
18 Guarantee, and among other things, your handling of  
19 Madison related to that, would come under some press  
20 scrutiny?

21 A No.

22 Q When did you decide to call Webster

1 Hubbell in September 1993?

2 A That was after a reporter, Susan Schmitt,  
3 from the Washington Post actually telephoned me at my  
4 extension at the RTC. I believe she called on  
5 September 28, 1993, and asked questions about the  
6 possibility that the Rose law firm had previously  
7 represented Madison when it was open.

8 I first -- the two people as we've  
9 discussed who have worked on the Frost case were Rick  
10 Donovan and Web Hubbell. Those are the two people  
11 who had primary responsibility.

12 I believe the first thing I did was try to  
13 reach Rick Donovan. Frankly, I have gone over the  
14 telephone records since the House hearing. And there  
15 is something that I would like to show you in them  
16 with regard to this.

17 I think that they show that at first I  
18 tried to contact Donovan, left a message for him.  
19 It's obviously a very brief telephone call, and that  
20 sometime during the next morning, he returned the  
21 call, and I believe I spoke with him, and possibly  
22 another partner from the Rose law firm office who may



1 have been in on the call.

2 And then after that, I placed a call to  
3 Hubbell's office, left a message, didn't speak with  
4 him, then wrote the e-mail to the press office,  
5 reporting the press inquiry and what I had found out  
6 so far. And then a few days later, Hubbell called me  
7 back and we had a conversation.

8 But something I really would like to be  
9 very clear about here is that the RTC produced, at  
10 least to the House side -- and I don't know if they  
11 produced these to you as well -- two sets of  
12 telephone records for me, and actually for several  
13 other people.

14 One report shows calls made from my  
15 extension. You can see the extension is 60316.

16 Q Before you get into reading from a  
17 document we're going to have to mark this as an  
18 exhibit. Do you have more than one copy?

19 A Yes.

20 MR. CHERTOFF: Why don't you give us a  
21 copy for Mr. Kravitz and a copy for me?

22 A I'm sorry. When you say I have more than

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1 one copy, I have one for myself, and then one here.

2 (Recess.)

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1 MR. CHERTOFF: Let's mark Exhibit AAB-1 a  
2 document marked "Review calls, new report," as AAB-2,  
3 "All calls made by date," and as AAB-3, a document  
4 marked -- it's an E-mail to Steven J. Katsanos.

5 (Exhibits AAB-1 through AAB-3  
6 identified.)

7 BY MR. CHERTOFF:

8 Q Ms. Breslaw, I furnished us with three  
9 documents which we have marked as AAB-1, AAB-2 and  
10 AAB-3. Would you describe what these are.

11 A AAB-1 is a report generated by the RTC of  
12 long-distance calls made and charged against my  
13 long-distance code. As a security measure, the RTC  
14 has for a number of years assigned people, not only  
15 lawyers but support staff, a code to use when making  
16 a long-distance call or placing a long-distance fax  
17 so that the RTC will be able to know who is making  
18 long-distance calls and also frankly to prevent  
19 strangers or unauthorized people from making  
20 long-distance telephone calls off of people's  
21 extensions in the building.

22 You can see that my code is the second

1 column, it says IDAC. My code number as it shows  
2 there is 384-7833, so these are long-distance calls  
3 made by me during a period of time, it looks to be  
4 from September 20, 1993 through October 29, 1993.

5 MR. KRAVITZ: Doesn't it start on  
6 September 1?

7 THE WITNESS: Oh, it does. The top entry  
8 says 9-20 but actually after that it does go to  
9 September 1. I did not create this document myself.  
10 The RTC did. But you're right, it does seem to  
11 actually cover September 1 through the end of  
12 October.

13 The call that I would draw your attention  
14 to is on page 3. Counting up from the bottom, it is  
15 the 10th call up from the bottom of page 3. It is a  
16 call made on September 28, 1993. By this record, it  
17 says 18:15. I assume that means 6:15 in the  
18 evening.

19 The number is 501-377-0325. I believe that  
20 that is Richard Donovan's telephone number at the  
21 Rose Law Firm, and if you look across the line there,  
22 you can see that it is a call placed to somewhere in

1 Little Rock, Arkansas, even according to this report,  
2 which lasted 1.5 minutes.

3 I believe that I made that call at the  
4 end -- roughly the end of the day on September 28,  
5 1993 after receiving a call earlier that day from  
6 Susan Schmidt, a Washington Post reporter, asking  
7 about the Rose Law Firm's representation of Madison  
8 and possibly the RTC.

9 As you can see from this record, it was a  
10 very short call, only lasted a minute and a half, and  
11 I believe what happened was that I left a message for  
12 Mr. Donovan and did not speak to him at that time.  
13 Now, this call does not seem to be shown on the  
14 second exhibit, AAB-2, which is as I understand it --  
15 and again this is another record that was created and  
16 produced by the RTC, not by me personally -- but my  
17 understanding is that the second exhibit reflects  
18 calls made from my telephone extension and the first  
19 column in the "all calls made by date," Exhibit 2,  
20 shows my extension, 60316.

21 Now, if I made a long-distance telephone  
22 call from a conference room, from the reception area,

1 from anywhere besides my personal office, that  
2 long-distance call would not be reflected in Exhibit  
3 2 because Exhibit 2 only shows calls made from my  
4 extension.

5 Exhibit 1, on the other hand, shows, as far  
6 as I know that it's a correct listing, all  
7 long-distance calls that I made during the period of  
8 time covered by the report.

9 So I believe the explanation for the  
10 discrepancy between the two reports is that I must  
11 have made the telephone call to Mr. Donovan not from  
12 my own phone. I may have made it from a conference  
13 room. By 6:15 in the evening the support staff may  
14 have left. I may have been sending a fax. There's a  
15 telephone near the fax room. If I was not at my desk  
16 but made this call, that would explain why it is not  
17 shown on the second report.

18 If we look at the second report --

19 BY MR. CHERTOFF:

20 Q Which is which exhibit, AAB-2?

21 A Correct. Again, as I've just said, I  
22 believe that this is a report that shows calls made

1 and actually received by my telephone extension,  
2 which is 60316, during a particular period of time.  
3 This report seems to work backwards chronologically.  
4 The very top entry is October 15, 1993. If you go to  
5 the very end of the report, the very last entry is  
6 September 15, 1993. So for some reason, this report  
7 works backwards, but it covers roughly the same  
8 period of time as the other report.

9 I believe that sometime during the morning  
10 of September 29, 1993, that Mr. Donovan called me  
11 back and we had a discussion about the Rose Law  
12 Firm's work for Madison.

13 On the second exhibit, which is AAB-2, you  
14 can see incoming calls as the sixth column, there's a  
15 column titled "INC," and I believe those show  
16 incoming calls and they show the date and time and  
17 they show how long the calls were but they do not  
18 show who placed them because my phone is not tapped  
19 so you can see that I was receiving calls through the  
20 days but you cannot tell from this report who exactly  
21 was calling.

22 I believe that one of these morning phone

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1 calls, if you go to the bottom of page 8, starting at  
2 9:22 a.m., there are a whole series of incoming  
3 calls you can see. Between 9:22 a.m. and 10:20 a.m.  
4 on September 9, 1993, I see several different calls,  
5 three of which were long enough to have a meaningful  
6 conversation. One is recorded as 26 minutes long,  
7 another is a little over 20 minutes long, and  
8 another, 12-1/2 minutes long. I do not recall  
9 particularly which of those calls came from Donovan,  
10 but I believe that one of them probably was.

11 I believe that Donovan did not have -- it  
12 seemed to me Donovan did not have a clear  
13 understanding of what work, if any, the Rose Law Firm  
14 had done for Madison before it failed, and that was  
15 the area of inquiry that was covered by the reporter  
16 and that was the area that I wanted to get  
17 information about. So I believe at 10:57 a.m., I  
18 placed a call to Webster Hubbell's office, and you  
19 can see that call --

20 Q I beg your pardon, which one?

21 A It's on page 8 of Exhibit 2. I believe  
22 it's nine items from the bottom. The number is

1 514-9500. It's a local call. I believe that is the  
2 general number to the office of Associate Attorney  
3 General, and I believe that is where Web Hubbell was  
4 in September of 1993.

5 I do not have a copy myself, but during the  
6 House public hearing, the House Banking Committee  
7 public hearing in August of this year, they provided  
8 a message slip from what they described as  
9 Mr. Hubbell's office which seemed to match this day  
10 and time. And as you can see from this report, this  
11 call is .3 minutes long, which would seem only long  
12 enough for someone to call, leave a message for  
13 someone to call them back but not have a real  
14 conversation with anyone.

15 Because Hubbell was at the time the  
16 Associate Attorney General of the United States, I  
17 really did not know whether he would return a stray  
18 call to me, a staff attorney with whom he had not  
19 spoken in some time, so what I knew I needed to do  
20 was get back to our press office to give them  
21 information to be able to respond to this press  
22 inquiry, so I did not wait to hear back from

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1 Mr. Hubbell because I really didn't know whether he  
2 would even call me back.

3 Instead I sent the E-mail, which is marked  
4 as AAB-3. This is an electronic mail message from me  
5 to Steven Katsanos and Felicia Neuringer in the RTC's  
6 office of communications. In fact, Mr. Katsanos is  
7 the director of the RTC office of communications.  
8 It's dated Wednesday, September 29, 1993 and it looks  
9 to me like this is 11:41:51 a.m. eastern daylight  
10 time.

11 So it seems to me that what happened was I  
12 received a phone call from Ms. Schmidt on the 28th, I  
13 did not have enough information to be able to respond  
14 to her myself, so I first placed a call to Donovan at  
15 the end of the day on September 28, left a message  
16 for him. I believe he returned my call sometime  
17 during the morning of September 29, 1993, and that I  
18 placed a call to Hubbell.

19 It's, I believe, clear from the shortness  
20 of the duration of the call to Hubbell and the fact  
21 that in the House hearing they had actually a message  
22 slip that I did not actually speak with him at that



1 time. And then I sent this E-mail to the press  
2 office, explaining the inquiry that had come in and  
3 giving them information to be able to respond.

4 Several days later, Mr. Hubbell did return  
5 the call, and he and I had a brief conversation about  
6 the Rose Law Firm's work both for me and for Madison,  
7 but I believe that that conversation occurred after I  
8 sent this E-mail, and that conversation is the only  
9 conversation that I had with Web Hubbell during that  
10 period of time.

11 Q I want to be very clear about this. It was  
12 on June 28 that you received a call from --

13 MR. FOX: September.

14 BY MR. CHERTOFF:

15 Q I'm sorry, September 28. It was on  
16 September 28 that you received a call from  
17 Ms. Schmidt?

18 A That's correct.

19 Q What did Ms. Schmidt say to you?

20 A I believe that our conversation is  
21 summarized in what's been marked Exhibit AAB-3. She  
22 asked questions about the Rose Law Firm's work for

1 Madison and for the RTC.

2 At the time, I believe my biggest concern  
3 was that she would misunderstand and erroneously  
4 conclude that the Rose Law Firm had been hired by the  
5 government to investigate itself for malpractice.  
6 That did not happen. It would be inappropriate  
7 obviously to hire a law firm to investigate itself,  
8 and I was afraid that she would not understand that.

9 So I believe that most of the conversation  
10 that I had with her was devoted to me explaining to  
11 her that the Rose firm had been hired to do one  
12 thing, and that was represent the government in the  
13 accounting malpractice case, and that they had not  
14 been hired to investigate attorney malpractice  
15 generally or themselves specifically.

16 I believe she also asked questions about  
17 whether the Rose Law Firm had represented Madison in  
18 the mid-1980s, and I believe that's reflected in the  
19 E-mail here. At the time when I received this  
20 inquiry, I did not remember that a year and a half  
21 before, during the presidential election, some press  
22 inquiry had come in raising this same kind of

1 question, did the Rose Law Firm represent Madison in  
2 the mid-1980s before state regulatory authorities. I  
3 just didn't remember getting that very quick inquiry  
4 in 1992, when this new inquiry came in a year and a  
5 half later in 1993.

6 So my perception was that I was being asked  
7 about something new and that something that I was not  
8 informed about, so my instinct was to call the people  
9 who would have factual information about this, and  
10 the two obvious people were Rick Donovan and Web  
11 Hubbell, because those are the people who had worked  
12 on the Frost accounting case.

13 Q Let me stop you because we're getting  
14 beyond the scope of the question.

15 First of all, who is Felicia?

16 A She is Steven Katsanos's assistant.  
17 Actually, I think she may have moved on to another  
18 job by now.

19 Q When did you first -- you had your  
20 telephone call with Sue Schmidt and Sue Schmidt asked  
21 you some questions; correct?

22 A That's correct.

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1 Q How long did that call last?

2 A Somewhere in the neighborhood of five  
3 minutes, something like that.

4 Q And what specifically did she ask you?

5 A I don't have a particular recollection of  
6 her exact words, but my sense of it is that she was  
7 asking questions about the Rose Law Firm's work. I  
8 believe the two areas were work that had been done  
9 for Madison or perhaps had been done for Madison  
10 before it failed, and then secondly, work that the  
11 Rose firm had done for us after Madison failed.

12 Q And what did you say to her?

13 A As best as I can remember, most of my  
14 response to her was devoted to being clear about what  
15 the Rose firm had done for the RTC, as I just  
16 explained, that the Rose Law Firm had been retained  
17 to work on the accounting case. As to the alleged  
18 prior representation, I believe that I told her that  
19 I did not recall ever being told that they had  
20 represented -- that the Rose firm had represented  
21 Madison before it failed and that I would check into  
22 it, and either I or someone else would get back to

1 her.

2 Q Was the specific earlier representation she  
3 mentioned in connection with an effort by Madison to  
4 raise capital through an issuance of preferred stock?

5 A I think so.

6 Q Having hung up the phone from Ms. Schmidt,  
7 you understood at this point that the Washington Post  
8 was interested in, among other things, a matter that  
9 you had been personally involved in; correct?

10 A Well, I had nothing to do with the state  
11 regulators or Madison in the mid-1980s.

12 Q You had to do with hiring the Rose Law  
13 Firm; correct?

14 A After it failed, that's true.

15 Q And you understood that that was one of the  
16 questions that Ms. Schmidt was asking about?

17 A True.

18 Q Did you then pick up the phone and call  
19 Mr. Katsanos?

20 A No.

21 Q Did you call anybody in the press office?

22 A I don't remember whether I called Felicia

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1 or not. It's apparent from this E-mail, the  
2 beginning line says "as you may know, Sue Schmidt of  
3 Washington Post called both Felicia and me  
4 yesterday."

5 By the time I wrote this E-mail, I knew  
6 that the reporter had called both Felicia and me, so  
7 it's possible that I called Felicia, notified her of  
8 the call, told her that there was a question that  
9 required factual information that I just didn't have  
10 because I didn't remember being told about this prior  
11 representation, and that I would gather some  
12 information and get back to them as soon as I could.

13 Q Well, were you asked to gather information?

14 A Certainly the reporter asked me to gather  
15 information. In terms of the normal process in the  
16 RTC, it would be routine for someone in my position  
17 to gather information and to give it to the press  
18 office so that they could provide a response.

19 Q Did you consider this a routine matter?

20 A Yeah. We get inquiries all the time on our  
21 cases. It is true that this touches on people who  
22 are prominent, but frankly, my office has pursued

1 claims against Fife Symington, who I think still is  
2 the governor of Arizona, we have sued sitting judges,  
3 typically, people who are on boards of directors of  
4 banks and savings and loans.

5 Q Were you personally involved in the case  
6 involving Fife Symington?

7 A No.

8 Q Was there anybody you had a case --  
9 withdrawn.

10 With respect to any of the cases you  
11 personally handled, did any of them ever touch on  
12 someone as prominent as the President of the United  
13 States and the First Lady?

14 MR. FOX: Is there such a person? Do you  
15 want to define?

16 MR. CHERTOFF: I don't know. Maybe the  
17 Chief Justice.

18 MR. FOX: Do you want to define levels of  
19 prominence?

20 MR. CHERTOFF: I want to know in her mind.

21 THE WITNESS: Well, I was responsible for  
22 an investigation which ultimately led to a lawsuit

1 against former directors and officers of Midwest  
2 Savings in Minneapolis. One of the board members was  
3 Muriel Humphrey, who was married to former Vice  
4 President Humphrey, so she was the former vice  
5 president's wife, and they were not in office at the  
6 time that this investigation was conducted, but I  
7 would consider that to be on parallel with this.

8 BY MR. CHERTOFF:

9 Q You would consider that to be on parallel  
10 with an inquiry touching on the sitting President of  
11 the United States?

12 A It wasn't on the sitting president.

13 Q And his wife?

14 A Well, it was a question about whether she  
15 had done work for Madison, yes.

16 Q Now, so do you or do you not have a  
17 recollection that after you talked to Ms. Schmidt,  
18 you had a conversation with someone in the press  
19 office?

20 A I don't have a clear recollection, but I  
21 believe that I would have had to talk at some point  
22 to Felicia to know that she had also been --

1 Q Please listen to the question. I'm not  
2 asking you about at some point. After you were  
3 finished with Ms. Schmidt, did you immediately  
4 thereafter get in touch with the press office?

5 MR. FOX: She was answering that question.

6 MR. CHERTOFF: I didn't want at some point  
7 because at some point --

8 MR. FOX: You interrupted her before she  
9 said at some point before this E-mail was sent.

10 BY MR. CHERTOFF:

11 Q On the 28th of September, after your call  
12 with Ms. Schmidt, did you get into contact with the  
13 press office at the RTC?

14 A I believe so.

15 Q Were you instructed to gather information?

16 A I do not specifically remember the  
17 conversation, but based on my experience with  
18 numerous press inquiries, the press office has no  
19 independent information on its own about anything  
20 that the RTC does. I cannot remember a single  
21 instance in which there's been a press inquiry and  
22 the press office has just handled it off the top of

1 their heads.

2 The routine practice is for them to find  
3 someone in the organization who would have  
4 information that's relevant and then take that  
5 information and make decisions about how to present  
6 it to the press.

7 Q Does that mean that you made the decision  
8 to go out and find out the information?

9 A No.

10 MR. FOX: That's not what she said.

11 THE WITNESS: My --

12 BY MR. CHERTOFF:

13 Q Did somebody tell you to do it or did you  
14 make a decision yourself?

15 MR. FOX: You've asked that question  
16 twice.

17 MR. CHERTOFF: I don't think it's been  
18 answered.

19 MR. FOX: No, she's told you she doesn't  
20 recall, but this is what the practice is.

21 BY MR. CHERTOFF:

22 Q Your answer is you don't recall whether in



1 this instance you were asked to do it?

2 A But that is the practice, yes.

3 Q Now, in your E-mail AAB-3, the first  
4 paragraph you indicate to Mr. Katsanos and to  
5 Felicia, first paragraph, "as you may know, Sue  
6 Schmidt of Washington Post called both Felicia and me  
7 yesterday. She's focused on the Rose Law Firm's  
8 representation of the RTC. To be honest, I think  
9 that this is a nonstory. However, she asked me to  
10 check something and call her back."

11 Now, is the "she" to whom you refer here as  
12 having asked you to check something and call back  
13 Felicia or Sue Schmidt?

14 A I don't specifically remember what was in  
15 my mind when I wrote this E-mail over two years ago.  
16 From the context of the paragraph, I believe that the  
17 reporter asked me to check something, but it is  
18 apparent from this E-mail that I am not calling her  
19 back. Instead, I am providing the information to the  
20 press office to respond to her.

21 Q Does the E-mail indicate to you that your  
22 decision to go out and get information was not

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1 spurred by a request made by Mr. Katsanos or  
2 Ms. Neuringer but by a request spurred by  
3 Ms. Schmidt? That's what set you off?

4 A It was spurred by the request made by  
5 Ms. Schmidt, but based on almost 10 years' worth of  
6 experience with the FDIC and RTC, it would have been  
7 irresponsible of me to hang up the phone with the  
8 reporter and wait until somebody else told me to  
9 gather information.

10 Based on my long experience with the  
11 agency, what would likely happen in that situation  
12 was that the press office would ask me to gather this  
13 information and provide it back to them, so I believe  
14 that at some point during the day on September 28,  
15 1993, I did speak with Felicia Neuringer and informed  
16 her of the contact. I do not remember the specific  
17 conversation. I believe that if Felicia had not  
18 wanted me to gather information, she could have told  
19 me that.

20 Q Now, how did you decide in addition to  
21 checking the files to actually reach out for someone  
22 from the Rose Law Firm?

1       A    I don't remember my thought process, but it  
2 seems obvious that these are the people from the firm  
3 who would know who the firm's clients were. I mean  
4 in other words, how would I know who the law firm's  
5 clients were? The only people who would know that  
6 would be the law firm or people at the law firm.

7       Q    Well, did you feel that it was incumbent on  
8 you to have an answer for the press about who the  
9 firm's clients were?

10       A    Well, since a question that was being  
11 raised was whether Madison had been a client of the  
12 firm's, it seemed to me, I believe -- and I don't  
13 remember my exact thought process, but sitting here  
14 today, it seems logical to me that I would need to  
15 ask someone to find out whether Madison had been  
16 represented by the Rose Law Firm.

17       Q    Wasn't the question to you only whether you  
18 knew as an RTC lawyer that Madison had been  
19 represented by the firm?

20       A    I don't remember specifically what the  
21 question was. It may have been. I don't know.

22       Q    Why did you decide that you wanted to move

1 beyond what you knew -- you would have known as of  
2 September 28, and gather information directly from of  
3 the Rose Law Firm concerning its prior representation  
4 of Madison?

5       A    I don't remember my exact thoughts, but I  
6 am a responsible person and if a press inquiry comes  
7 in, and I know from my long experience that what is  
8 going to happen anyway is that the press office is  
9 going to try to find someone in the organization to  
10 gather information which it certainly would not have,  
11 then I was being responsible and trying to gather  
12 information that would be of assistance to the Office  
13 of Corporate Communications and I provided that  
14 information to that office within 24 hours.

15       Q    My question to you was -- maybe I wasn't  
16 clear. My question to you was why you felt it was  
17 going to be relevant to the RTC to give a response to  
18 the press about anything other than what it knew  
19 concerning Rose's representation of Madison as  
20 opposed to actually finding out what Rose knew?

21       A    Well, it would be the press office's  
22 decision as to whether they wanted to share all

1 relevant information with the press or not, but it  
2 seems to me now sitting here that it is better to  
3 know all the information or as much information as  
4 you can get in a reasonable amount of time, to know  
5 that information yourself before making decisions  
6 about what to say to the press.

7 I mean, frankly, it would seem  
8 irresponsible to me to treat a press inquiry as an  
9 interrogatory in discovery where if the question  
10 isn't written exactly just so, then you don't provide  
11 an answer to something that's really relevant but  
12 that the questioner didn't carefully ask for.  
13 Internally what you want to do is gather whatever  
14 information you can and then once you have that pool  
15 of information, the press office would decide what  
16 part of it to publicly disclose.

17 Q Was this the first time you had heard about  
18 the possibility that the Rose Law Firm had previously  
19 represented Madison in connection with an effort to  
20 raise capital for the bank?

21 A As we have discussed, there was some kind  
22 of a press inquiry, not to me directly, in 1992. I

1 don't specifically recall what the substance of the  
2 alleged representation was.

3 Q But this was pretty specific?

4 A This was, yes.

5 Q Were you ignored at the Rose Law Firm?

6 A Yes.

7 Q Did you call up because you wanted to find  
8 out whether they had misled you?

9 A "Mislead" or "misled" is sort of a harsh  
10 term, but I was not pleased to have this kind of  
11 inquiry coming in from a reporter under circumstances  
12 in which I think it is clear that there is no written  
13 disclosure from the Rose Law Firm of this issue and  
14 so my perception in September of 1993 was that this  
15 was the first time that I was hearing about these  
16 issues. And really what you have alluded to may be  
17 accurate, which is perhaps this was the first time  
18 that I had been told in specifics that the Rose firm  
19 had represented Madison before the state regulatory  
20 authorities.

21 Q Were you concerned you might be embarrassed  
22 in the press over this incident?

1 A At that time no, it really did not occur to  
2 me at that time that I, a staff attorney, would ever  
3 be dragged through the press.

4 Q Now, you tried to call Mr. Donovan on the  
5 28th?

6 A Yes.

7 Q And you left a message for him?

8 A I believe so. That's what this record  
9 tends to indicate.

10 Q Now, when we talk about this record, you're  
11 talking about AAB-1; right?

12 A That's correct.

13 Q And I want to be sure I understand this.  
14 AAB-2 records every call made to or from your  
15 extension; correct?

16 A Yes.

17 Q And it does so whether or not the call is  
18 long distance; correct?

19 A Yes.

20 Q AAB-1 records only long-distance calls;  
21 correct?

22 A That is my understanding.

1 Q But it records any call that you make from  
2 any telephone at the RTC using your access number?

3 A I believe that's right.

4 Q So we can determine from AAB-1 that the  
5 call you've identified as the call to Mr. Donovan at  
6 6:15 on September 28 was not made at your extension;  
7 correct?

8 A I think that must be right. I want to be  
9 clear on the fact that I did not prepare these  
10 records, but that's the conclusion that I personally  
11 would reach.

12 Q At the very least, the call you made on  
13 September 28 at 6:15 p.m., which appears on AAB-1  
14 which is the record generated from your access code,  
15 does not appear on AAB-2, which is the record that's  
16 generated from your extension?

17 A That's correct.

18 Q And --

19 MR. FOX: I just want to be clear. We are  
20 not really 100 percent sure how these records are  
21 generated. I just don't want to mislead you about  
22 that.

1 MR. CHERTOFF: Well, you brought them in  
2 and in fact had made a presentation based on them.

3 MR. FOX: I recognize that, but they were  
4 given to us as copies of documents that the RTC was  
5 producing to the House, and I just don't want to --  
6 and we are giving you our assumptions.

7 BY MR. CHERTOFF:

8 Q Your understanding is these are  
9 RTC-generated documents?

10 A That's correct.

11 Q You have no reason to believe that anyone  
12 has monkeyed with the documents, have you?

13 A No.

14 Q So that bearing that in mind, just to be  
15 clear, AAB-1, which is the list of long-distance  
16 calls made with your access code, indicates a  
17 telephone call at 6:15 to Little Rock that does not  
18 appear on AAB-2, which is supposed to be a list of  
19 all calls to or from your extension?

20 A That's correct.

21 Q Can you conclude from that that the call  
22 you made to Little Rock was from somewhere other than

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1 your extension?

2 A That would be my assumption, correct.

3 Q You did not hear back from Mr. Donovan on  
4 September 28?

5 A I do not believe so.

6 Q Did you try to call anybody else from the  
7 Rose Law Firm?

8 A No.

9 Q Because you were waiting for Mr. Donovan's  
10 call?

11 A That's right. He was the only -- as we  
12 have discussed several times, he and Web Hubbell were  
13 the two people who worked on the Frost litigation in  
14 connection with Madison, so they would be the people  
15 that I would have assumed would have had information  
16 that would be responsive.

17 Q Why didn't you turn to Mr. Hubbell first?

18 A Because he was Associate Attorney General  
19 of the United States and I really wasn't sure that he  
20 would respond to an inquiry from me.

21 Q So you wanted to talk to Mr. Donovan first?

22 A Yes.



1 Q So on the 28th of September, you did not  
2 hear back from Mr. Donovan?

3 A I don't think so.

4 Q And you have no recollection of hearing  
5 back from him?

6 A I have a recollection of a conversation  
7 with him, and I believe another partner from the Rose  
8 Law Firm, who I believe is Ronald Clark, who I think  
9 is their managing partner. I have a recollection of  
10 them calling me back together.

11 And from the Exhibit 3, we can see that by  
12 11:41 a.m. on September 29, I had had a conversation  
13 with people from the Rose Law Firm, so sometime  
14 between 6:15 in the evening on September 28, 1993 and  
15 11:41 a.m. the next morning, September 29, 1993, I  
16 did speak with Rick Donovan and I believe Ronald  
17 Clark, and I believe it probably was in the morning,  
18 but I'm not -- I can't say that for sure. I don't  
19 remember the exact time that they called me back.

20 Q Well, the calls on AAB-1 are calls you --  
21 are outgoing calls; correct?

22 A True.

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1 Q Now, the calls on AAB-2 are incoming calls;  
2 correct?

3 A Both.

4 Q Are there any incoming calls from Little --  
5 withdrawn.

6 Are there any incoming calls to you of any  
7 length of time after 6:15 p.m. at your extension --

8 A No.

9 Q -- on the 28th of September?

10 A No.

11 Q And is the number that you left for  
12 Mr. Donovan in Little Rock the number of your  
13 extension?

14 A I believe so.

15 Q Would you have had reason to leave a number  
16 other than that of your extension?

17 A No.

18 Q So you conclude from that that the call  
19 that came from Mr. Donovan and perhaps Mr. Clark came  
20 the next morning?

21 A Yes. Again on that page 8 of the  
22 Exhibit 2, as I discussed before, you can see that on

1 the morning of September 29, 1993, there are several  
2 incoming calls that are long enough to have what I  
3 would characterize as a meaningful conversation. You  
4 can see there's one at 9:22 which lasted 26 minutes,  
5 one at 9:58 which lasted a little over 20 minutes,  
6 and one at 10:20 which lasted 12-1/2 minutes.

7 Q You were in your office when you spoke to  
8 Mr. Donovan and Mr. Clark?

9 A I believe so, yeah.

10 Q And there were no calls, incoming calls to  
11 your office after 6:15 in the evening on September 28  
12 of any significant duration that day?

13 A Right.

14 Q After you spoke to Mr. Donovan and perhaps  
15 Mr. Clark, you then decided to call Mr. Hubbell?

16 A Yes.

17 Q Why is that?

18 A Well, Mr. Clark had no personal knowledge  
19 or at least the sense I had in the conversation was  
20 that he had no personal knowledge of the Rose Law  
21 Firm's work for Madison in the 1980s. Donovan seemed  
22 to have a vague recollection but was very imprecise.

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1 I believe he said he wasn't sure whether the firm had  
2 even billed for the work.

3 The sense of it was that he was minimizing  
4 the work but it also appeared to me just from the  
5 general tenor of things that he did not really know  
6 the facts very well.

7 Q Did they suggest that you call Mr. Hubbell?

8 A I don't recall whether they did or not. It  
9 may have been more subtle than that. It may have  
10 been that they suggested that Hubbell would have been  
11 the person who would probably know better. I don't  
12 recall them specifically telling me, you should talk  
13 to Web, but that may have been the logical inference  
14 to draw from Donovan's vague recollection.

15 Q And how long after the conversation with  
16 Donovan and Clark did it take you to decide to call  
17 Hubbell?

18 A I don't have a clear recollection sitting  
19 here today, but looking at these records, it's  
20 apparent that I placed a call to the office of  
21 Associate Attorney General at 10:57 a.m. the morning  
22 of September 29, so essentially immediately. I may

1 have gotten a couple of calls in between, but within  
2 a couple of hours.

3 Q Did you consult with anybody before you  
4 decided to call Mr. Hubbell?

5 A No.

6 Q You didn't think it was something -- you  
7 didn't think that the placing of a call to the  
8 Associate Attorney General of the United States was  
9 something you ought to clear first?

10 A It didn't occur to me at the time. Hubbell  
11 was someone who I knew as my contractor, so in that  
12 context, I would call other contractors without  
13 getting permission from anybody, so I think I may  
14 have done it impulsively. I don't think I cleared it  
15 with anybody.

16 Q Did you mention in your E-mail to  
17 Mr. Katsanos that you were in the process of trying  
18 to get ahold of Mr. Hubbell?

19 A I don't remember.

20 Q Take a look at it.

21 (Witness reviewed the document.)

22 A This has a general note that I have spoken

1 to Rose partners who worked with me on the Madison  
2 case. I believe I had spoken to Rick Donovan by  
3 then, and I'm not sure why I had "partners," plural.  
4 It may be because Mr. Clark was on the telephone, but  
5 I don't -- this E-mail does not specifically say that  
6 I'm going to try to reach Mr. Hubbell.

7 Q Is there some reason you didn't put that in  
8 there?

9 A Well, again, I really didn't know whether  
10 Hubbell would call me back, and this is, you know, a  
11 press inquiry from a reporter, Ms. Schmidt, who has  
12 been from time to time critical of the RTC generally,  
13 and so I think that probably was also in the back of  
14 my mind, that this would be an inquiry that the press  
15 office would want to be able to respond to fairly  
16 quickly.

17 Q Who told you from the Rose Law Firm that  
18 Mrs. Clinton did not work on the project involving  
19 raising capital for Madison?

20 A I think it was Donovan. I think that he  
21 was -- again, my recollection of the conversation is  
22 that he seemed vague and so I was not confident that

1 he really had personal knowledge of the things he was  
2 talking about, but I believe it was him that told me  
3 at that time that she had not worked on that project,  
4 but I did not ask him specifically, you know, whether  
5 he had gone back through all their old files, or I  
6 didn't question him carefully on what the basis of  
7 his knowledge was.

8 Q Did he tell you that they hadn't billed for  
9 the work that they did on raising capital?

10 A He -- I believe he was the one who said to  
11 me that he didn't think they had billed.

12 Q After you wrote this E-mail, did  
13 Mr. Katsanos or Ms. Neuringer ask you to go and do  
14 any additional follow-up work in gathering  
15 information?

16 A Not that I recall.

17 Q Did you do any additional follow-up work?

18 A Subsequently Jack Smith, who is the FDIC  
19 deputy general counsel, called me on several  
20 occasions through the fall of 1993 and asked me  
21 factual questions about Madison because Mr. Smith was  
22 attempting to respond to questions from Susan

1 Schmidt, The Washington Post reporter.

2 So to be clear, I don't believe that  
3 Katsanos or Neuringer subsequently asked me to gather  
4 information, but I do believe that Mr. Smith from the  
5 FDIC did make several inquiries of me and that I did  
6 find information and give it to him.

7 Q Where did you get the information from?

8 A I guess by that point, we had pulled the  
9 closed files out of storage to make copies to send to  
10 Kansas, and so we -- gosh, you know, I don't remember  
11 clearly whether we kept a full copy at that point of  
12 all the files or whether it was more a matter of my  
13 secretary now being familiar with how to find the  
14 FDIC closed files and how to get into those files and  
15 get me information as necessary.

16 I don't believe that I personally took  
17 possession of Madison files during that period.

18 Q Well, after you sent this E-mail at 11:41  
19 on September 29, did you continue to try to reach  
20 Mr. Hubbell?

21 A No.

22 Q No?

1 A No.

2 Q Did Mr. Hubbell reach you?

3 A Yes.

4 Q When was that?

5 A It was within the next day or two. I don't  
6 remember exactly when he called.

7 Q But you didn't make any further efforts to  
8 reach him?

9 A No.

10 Q You didn't try to reach him before -- let  
11 me withdraw the question.

12 The only time you tried to reach him was on  
13 the morning of September 29, shortly before you sent  
14 this E-mail, after you had spoken to Mr. Donovan?

15 A Yes, I believe so.

16 Q And after that, the next contact you had  
17 with him is when he called you back?

18 A That's right.

19 Q What was your discussion with him?

20 A I believe that I told him that the reporter  
21 had called and asked questions about whether the Rose  
22 Law Firm had represented Madison before it failed. I

1 believe that he reminded me that the issue that had  
2 come up while the case was pending was his family  
3 relationship with Seth Ward.

4 And my recollection is that he left me with  
5 the impression that he had not personally represented  
6 Madison before it failed and that the firm, the Rose  
7 Law Firm, had not had an effective way of checking  
8 conflicts in 1989 when I hired them to work on the  
9 accounting case, and that it was a relatively small  
10 amount of work. And it seems to me that in that  
11 conversation he also told me that he personally did  
12 not know in 1989 that others in the firm had worked  
13 for Madison in 1985 and 1986.

14 Q Did he tell you that Mrs. Clinton had or  
15 had not done work on raising capital for Madison?

16 A I don't recall that he particularly  
17 mentioned Mrs. Clinton one way or the other.

18 Q Did you tell him that this whole effort by  
19 you to call him was generated by a Washington Post  
20 inquiry?

21 A Yes.

22 Q Did you indicate to him that he should get



1 in touch with Mr. Katsanos?

2 A No.

3 Q Did you subsequently write an E-mail to  
4 Mr. Katsanos indicating that you had had a  
5 conversation with Mr. Hubbell and what Mr. Hubbell  
6 had said?

7 A I don't recall.

8 Q Have you ever seen such an E-mail?

9 A I don't recall seeing one. I think that  
10 the information that Hubbell gave me in his  
11 conversation with me was basically consistent with  
12 what Donovan had told me at that time, so I don't  
13 remember whether I sent a follow-up E-mail to  
14 Katsanos or not, but if I did, I don't think it would  
15 have had much to say, except that I had now talked to  
16 yet another person who had sort of minimized the  
17 issue.

18 Q But didn't you think Mr. Katsanos would be  
19 particularly interested in what the Associate  
20 Attorney General said about his recollection of this?

21 A Well, no, because you're in sort of a  
22 difficult situation in that this shouldn't --

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1 Hubbell's recollection shouldn't carry particularly  
2 more weight than someone who is at the law firm and  
3 who is still dealing with us. I don't recall  
4 specifically what I thought about that.

5 At the beginning of this deposition you  
6 asked me not to speculate and I'm letting myself do  
7 that, so --

8 Q How did you get AAB-3 to bring here today?

9 A This copy, I think, frankly was given to us  
10 during the House Banking Committee hearing, I think.  
11 I'm not sure.

12 Q By whom?

13 A Or just before. Ms. Garcia, who is a staff  
14 member on the House side.

15 Q Staff member for whom?

16 A The Democrats.

17 Q This fax line here, 202-226-0070, do you  
18 know whose number that is?

19 A No.

20 Q Did you ask Ms. Garcia if she had seen any  
21 other E-mails between you and Mr. Katsanos regarding  
22 press inquiries on this?

1 A Well, I should be clear. This I believe  
2 was given to my lawyer. I did not have the  
3 conversation with her or receive documents from her.

4 Q Do you have an understanding of whether any  
5 request was made by anybody representing you to her,  
6 Ms. Garcia, for any additional E-mails?

7 MR. FOX: Now, wait a minute.

8 THE WITNESS: I didn't understand the  
9 question.

10 MR. FOX: Are you asking whether I made any  
11 request?

12 MR. CHERTOFF: Well, I'm asking if she has  
13 an understanding that she made such a request, yeah.

14 MR. FOX: That would call for privileged  
15 communication.

16 MR. CHERTOFF: I don't think your  
17 communication with the House Democrats is privileged.

18 MR. FOX: My communication with her is  
19 clearly privileged.

20 MR. CHERTOFF: You're asserting the  
21 privilege on that?

22 MR. FOX: Yes.

1 BY MR. CHERTOFF:

2 Q Did you make any effort to obtain either  
3 directly or indirectly from any source any other  
4 E-mails that you sent to Mr. Katsanos on this subject  
5 matter?

6 MR. FOX: Exclude from your answer any  
7 conversations you had with me.

8 MR. CHERTOFF: No, it doesn't, because let  
9 me be quite clear.

10 MR. FOX: I'm instructing her to exclude it  
11 in the answer. I understood your question didn't,  
12 but I'm instructing her.

13 MR. CHERTOFF: Let me put it on the  
14 record. My question requests that if she requested  
15 anybody, including her lawyer, to get something, I  
16 don't think that's privileged.

17 MR. FOX: I do.

18 MR. CHERTOFF: Well, I'm putting it on the  
19 record. You want to instruct her not to answer?

20 MR. FOX: Right. She can answer with  
21 respect to anybody other than me.

22 BY MR. CHERTOFF:

1 Q Answer as much of it as you're going to  
2 answer and the rest we'll deal with later.

3 A Putting aside any communications with my  
4 lawyer, I have not asked -- I have not myself had  
5 conversations with anybody from the House or the  
6 Senate during this whole proceeding. Internally at  
7 the RTC, I turned over my Madison records to Mark  
8 Gabrellian over a period of time.

9 I did not keep copies of all my records. I  
10 don't remember off the top of my head frankly whether  
11 this was a record that I kept or not, but the RTC has  
12 had custody of my records since I quit the Madison  
13 investigation in March of 1994.

14 During the spring of 1994 when the reports  
15 first began to surface in the press that Jean Lewis  
16 had secretly recorded my conversation, quite frankly  
17 at that point I became concerned about security in  
18 the RTC and at that point I believe that I handed  
19 over Madison files to Mark Gabrellian, which were RTC  
20 files, and I believe that I took home my own personal  
21 things out of my desk. And I think over time in  
22 sorting out my things at home I found some RTC

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1 Madison papers and I have subsequently produced those  
2 to Gabrellian to be produced to either the House or  
3 the Senate.

4 Q When you called on September 28 to the Rose  
5 Law Firm in Little Rock at 6:15 in the evening and  
6 left a message, did you hear back from Mr. Donovan  
7 immediately thereafter?

8 A As I've testified, I don't remember the  
9 specific time of his phone call. Based on our joint  
10 review of these phone records, it does not appear  
11 that he called me back that night. Instead, it seems  
12 more likely that he called me back the next day, and  
13 I certainly will testify that I have not received any  
14 telephone call at home from Mr. Donovan or anybody  
15 else from the Rose Law Firm.

16 Q Well, after you placed your call to  
17 Mr. Donovan at 6:15 in the evening, did you go home?

18 A I don't remember specifically. From  
19 looking at these phone records, it looks like I made  
20 a couple of other calls, the last of which seems to  
21 be about 7:30, so I don't have a specific  
22 recollection, but it seems like I did some other

1 business before I went home.

2 Q Well, looking to the records, again on  
3 AAB-1, after your 1-1/2 minute call leaving a message  
4 to Little Rock, you made a call to Morristown to a  
5 law firm, I take it?

6 A That's Rutger Danzig, yes.

7 Q Then after that you made a phone call to  
8 Irvine?

9 A Yes, I believe that those are -- actually  
10 there are two calls to the same number. To the best  
11 of my recollection, that is the RTC office in Irvine,  
12 California.

13 Q Now, between the time that you made your  
14 call at 6:15 and the time you completed your call to  
15 Irvine, had you gotten a call back from Mr. Donovan  
16 or Mr. Clark from the Rose Law Firm?

17 A I don't believe so. And again, if we sort  
18 of look at the time periods, I don't know, I suppose,  
19 there's five minutes or so between calls, so it's  
20 possible timewise but I don't recall that happening.

21 Q Well, did you get a call back between --  
22 when I'm saying the call back, I'm talking about this

---

1 call in which you had a discussion with Mr. Donovan  
2 and Mr. Clark about what they recalled.

3 A Right.

4 Q How long would you say that conversation  
5 took at a minimum?

6 A At a minimum five minutes.

7 Q So bearing that in mind, do you think they  
8 called you back right after you hung up at 6:15 and  
9 completed the call before 6:20?

10 A I don't think so.

11 Q Do you think they called you back at 6:20  
12 and completed the call before -- I'm sorry, after you  
13 had completed your 6:20 call, which is 1.8 minutes  
14 long, and then completed their call back by 6:28?

15 A I don't think so.

16 Q Do you think that they completed the call  
17 to you between the time you hung up on the Irvine  
18 call at about 6:31 and the time you called Irvine  
19 back at 6:52?

20 A I don't think so.

21 Q So this -- and then do you think that they  
22 called you back between the time you finished your

1 Irvine call, which was essentially at 7:10, and the  
2 time you called Los Angeles at 7:11?

3 A The Los Angeles call is to Tuttle & Taylor,  
4 another of our RTC contractors, and no, I do not  
5 think so.

6 Q So from the phone records that take you  
7 from the end of the 29th until about 7:45 or so, it  
8 looks as if you -- it would have been pretty nigh  
9 impossible to have this conversation with Mr. Donovan  
10 and Mr. Clark you've testified about during the  
11 balance of the time on the 28th of September, at  
12 least between 6:15 and 7:45.

13 A That's correct.

14 Q And it follows from that that your call in  
15 accordance with your testimony, that your call to  
16 Mr. Hubbell did not occur -- your first call to  
17 Mr. Hubbell did not occur until sometime thereafter?

18 A Correct.

19 Q And you stand by that testimony?

20 A Yes.

21 Q You're quite positive that you didn't call  
22 Mr. Hubbell after you had tried to leave a message

1 for Mr. Donovan and hadn't gotten through to him?

2 A I don't remember doing that.

3 Q You've had testified at great length over  
4 the last 45 minutes about this?

5 MR. FOX: But she's never told you anything  
6 but what her best recollection is and what she's  
7 construed from her records. Don't try to use the  
8 "quite positive" as though she remembers this 100  
9 percent. She's never said that.

10 MR. CHERTOFF: Everything anybody testifies  
11 to is based on their recollection.

12 BY MR. CHERTOFF:

13 Q I want to ask you, having given all the  
14 testimony you've given up to now for the past 30 or  
15 40 minutes, did you call Mr. Hubbell only after you  
16 had spoken to Mr. Donovan and Mr. Clark or did you  
17 call him before you had spoken to Mr. Donovan and  
18 Mr. Clark?

19 A To the best of my recollection, it was  
20 afterwards, but I do not have a clear recollection of  
21 it. My sense in my own mind is that there was  
22 essentially some telephone tag, some calling and



1 leaving messages, and that it was after I spoke with  
2 Donovan and probably Clark and it seemed to me that  
3 their understanding of the situation was vague. My  
4 best recollection is that it was only after that that  
5 I tried to reach Mr. Hubbell.

6 Q And the reason for that is because having  
7 exhausted whatever effort you made with Mr. Donovan  
8 and Mr. Clark, you then felt that Mr. Hubbell was the  
9 next best recourse?

10 A I believe so.

11 Q You didn't turn to Mr. Hubbell as a first  
12 recourse, did you?

13 A To the best of my recollection, I did not.

14 Q You told us earlier that you would have --  
15 that because of Mr. Hubbell's position, you would  
16 have been reluctant to pick up the phone and call him  
17 first?

18 A Both because of his position and because he  
19 was no longer employed at the law firm, so while he  
20 certainly could tell me facts, it was a more  
21 complicated situation because he was no longer part  
22 of the law firm, and if the law firm had any kind of

1 client issues, he was now sort of a step removed from  
2 that, so it was both of those things.

3 Q Now, did you on the 29th of September have  
4 communication with anybody else within the RTC  
5 concerning this press inquiry?

6 A I believe that I mentioned it to Tom  
7 Hindses, and the reason I think that is when I reread  
8 this E-mail from September 29, if you go to the  
9 second page of the E-mail, which is the second page  
10 of Exhibit AAB-3, it talks about a letter from Vince  
11 Foster which deals with representations that the Rose  
12 Law Firm made to the government in 1989.

13 Although the E-mail does not say so  
14 specifically, it's my best recollection that it was  
15 Tom Hindses who suggested to me that I look in certain  
16 contractor files to see what, if anything, the Rose  
17 Law Firm had submitted in writing during that time  
18 period.

19 During the winter of 1989, Mr. Hindses was  
20 employed at the Federal Home Loan Bank board. It is  
21 my general understanding that during that period at  
22 the Federal Home Loan Bank board, the lawyers were

1 aware that a number of Arkansas savings and loans  
2 were going to fail and were in the process of trying  
3 to set up some kind of coordinated response.

4 It's my further understanding that  
5 Mr. Hindes was one of the people involved in that  
6 project at the Home Loan Bank board and that he at  
7 that time had a general recollection that they were  
8 working on this project.

9 So again, to be clear, in 1993, I believe  
10 that I had -- I mentioned to Hindes that I had gotten  
11 this reporter's call. I believe that he had a  
12 general, not detailed, but general recollection about  
13 this Arkansas project that he had worked on in 1989,  
14 and that based on his recollection, I went to look at  
15 certain contractor files and it was in those files  
16 that I found this letter from Mr. Foster.

17 Q Did you communicate with Ms. Yanda and  
18 Janet Sheldon and Beth McClain on the issue of these  
19 calls?

20 A I don't remember it but you're holding a  
21 document which must indicate it.

22 Q Let me ask you, on the morning of the 29th,

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1 were you spending the balance of the morning on this  
2 issue, this press call?

3 A I don't have a clear recollection. It's  
4 obvious from the phone records that I had several  
5 relatively long telephone calls. It's also obvious  
6 from the phone records that I again placed a call to  
7 Los Angeles. This would be Tuttle & Taylor.

8 I infer from the Los Angeles call, both  
9 that morning and a series of Los Angeles and southern  
10 California calls at the end of the day on the 28th  
11 that something must have been happening in the  
12 Pacific Savings director and officer case, because  
13 these numbers are in Los Angeles to the lawyer at  
14 Tuttle & Taylor, our outside counsel on that case,  
15 and to the investigator in the RTC's southern  
16 California office, who would have been working on  
17 this. I don't remember specifically what the issue  
18 was but it's clear there are a whole series of  
19 conversations about something to do with that project  
20 in California.

21 Q Well, were you nervous as of the morning of  
22 September 29 about where this press scrutiny was

1 going to put you?

2 A No.

3 Q Were you focused on fact that there was a  
4 lot of press attention on this matter because the  
5 Clintons were involved?

6 A I don't think at that time there was a lot  
7 of press attention. There had been some limited  
8 attention a year and a half before in 1992, but to my  
9 knowledge, in September of 1993, there was no press  
10 attention.

11 Q Were you aware as of the 29th of September  
12 that there had been allegations made in connection  
13 with an indictment in Little Rock by someone there  
14 concerning the Clintons?

15 A You know, as we sit here two years later, I  
16 cannot recall specifically when I heard that, I  
17 believe the individual is David Hale, that he had  
18 made some type of allegations that have something to  
19 do with the Small Business Administration. I've  
20 never had a clear sense of exactly what he was  
21 indicted for or exactly what he has accused I believe  
22 Mr. Clinton of doing.

1 Q Did that enter into your thinking on the  
2 29th when you were trying to formulate a response to  
3 these press inquiries?

4 A No, because the Rose representation of  
5 either Madison before it failed or the government in  
6 the accounting case had nothing to do with the Small  
7 Business Administration. I'm not sure as we sit here  
8 today that I even knew about David Hale's allegations  
9 at the time of these calls, but as I sit here today,  
10 I can't see any real connection between them so --

11 Q Did you have a practice of following  
12 stories involving allegations against the Clintons in  
13 the paper?

14 A No.

15 Q Did you have friends in Arkansas who kept  
16 you informed about allegations involving the  
17 Clintons?

18 A No.

19 Q I'm going to show you -- see if I can focus  
20 your attention on what's been provided to us as Bates  
21 number JY 0203. I'm going to ask you to look at  
22 this. This is an E-mail to Beth McClain, Janet

1 Sheldon and Julie Yanda from you dated September 29,  
2 1993. It's in the morning.

3 MR. KRAVITZ: What's the number on that  
4 again, Mike?

5 MR. CHERTOFF: JY 0203.

6 BY MR. CHERTOFF:

7 Q And I want to direct your attention in  
8 particular, I'll give you the whole thing to read, to  
9 the second paragraph, where it says "because Hillary  
10 Clinton was a member of the Rose firm, we receive  
11 inquiries from time to time about its work for the  
12 RTC. I have heard that following their indictments  
13 last week, several criminal defendants have made some  
14 type of allegations against either the Clintons or  
15 the Rose firm. This may have sparked new  
16 inquiries."

17 Take a look at that for a moment.

18 (Witness reviewed the document.)

19 Is that your E-mail?

20 A I do not specifically recall writing or  
21 sending this E-mail, but it's -- the record seems to  
22 indicate that it's from me to the people that you

1 have described.

2 Q And it relates to the press inquiries you  
3 had had the day before from Ms. Schmidt; right?

4 A There's a passing mention, yes.

5 Q Read the passing mention, please.

6 A "For what it's worth, I've already had  
7 inquiries from the Washington Post."

8 Q Is there any doubt in your mind that that  
9 refers to the call from Sue Schmidt, the earlier call  
10 on the 28th of September?

11 A No.

12 Q What was the reason you sent this E-mail?

13 A Well, I don't specifically remember. This  
14 seems to be responding to questions by one or some of  
15 the people who have -- to whom I am addressing. I  
16 don't know why I would have taken it upon myself to  
17 give background on the accounting case or send this  
18 E-mail. Is there a prior E-mail?

19 Q I'm afraid I can't answer questions. I can  
20 tell you this is all I have.

21 My question to you though is why would you  
22 have taken it upon yourself to give information about

1 what you had heard concerning allegations made by  
2 David Hale?

3 A Well, as we saw from the E-mail from the  
4 summer of 1993, I believe from Julie Yanda, one of  
5 the reasons that I was given for having my old files  
6 pulled out of storage and copied and sent was that I  
7 believe Julie Yanda had told me that they anticipated  
8 or were already getting Freedom of Information Act  
9 inquiries, which could be from the press or could be  
10 from other people, so it seems to me that I would  
11 have known generally that Julie was working on  
12 something to do with Madison and that it would be  
13 useful or marginally interesting for her to know that  
14 another inquiry had come in.

15 I'm trying to think why I would have copied  
16 Beth McClain. Beth McClain is a person in the  
17 Washington office who really oversees our computer  
18 records, and I'm trying to remember who Janet Sheldon  
19 is. I don't have a clear sense of it, but she may be  
20 somebody in either an office that deals with Freedom  
21 of Information Act inquiries or press inquiries in  
22 Kansas.

1 So I guess I'm wondering, frankly, if  
2 either Beth McClain or Janet Sheldon or even Julie  
3 Yanda sent me any kind of request for information and  
4 that this was my response.

5 Q Well, what's the time on that E-mail?

6 A Well, it says 8:20 central daylight time,  
7 so that would be 9:20 eastern time.

8 Q So they would have had to send a request  
9 very early in the morning their time in order for  
10 this to be a response; correct?

11 A No. I mean they could have sent me a  
12 message the day before.

13 Q And you think they asked you for  
14 information about the Hale indictment or allegations  
15 against the President that were unrelated to the RTC?

16 A Well, as I've testified, I don't have a  
17 clear recollection. I don't have a recollection of  
18 sending this E-mail at all, so to some extent I'm  
19 speculating about them asking me for information  
20 first. I do not recall the nature of their inquiry,  
21 if any.

22 Q Did you get involved during this period of



1 time, which is to say in late September or early  
2 October 1993, in examining either -- any of the  
3 criminal referrals relating to Madison or any reports  
4 or summaries of such criminal referrals?

5 A No.

6 Q Completely outside of your jurisdiction?

7 A Correct.

8 Q Is there any reason you would have ever  
9 have handled those criminal referrals?

10 A What do you mean when you say "handled"?

11 Q Had them physically in your possession or  
12 available to you.

13 A Not during the time in which they were  
14 being prepared.

15 Q What about thereafter?

16 A I believe that in November of 1993, when  
17 the FDIC legal division started its inquiry into the  
18 Rose Law Firm's disclosures with regard to its  
19 representation of us in the accounting case, that Tom  
20 Schultz, who was working for Jack Smith -- I think he  
21 still does work for Jack Smith -- asked me for my  
22 files on Madison, and I believe that in the course of

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1 that, that I sent some kind of request to the people  
2 in Kansas to provide copies not only of the new  
3 criminal referrals but of the indictment of McDougal  
4 from back a few years before to Tom Schultz so that  
5 he could use them in his project.

6 Q Why did you send that request instead of  
7 Mr. Schultz?

8 A Well, Mr. Schultz had asked me to provide  
9 everything that I had, and I was trying to encourage  
10 everybody to submit whatever they had that could  
11 possibly be helpful.

12 Q So you told Mr. -- you told -- who did you  
13 contact out in Kansas to get this?

14 A I don't remember specifically.

15 Q Was it Mr. Adams?

16 A It could have been.

17 Q Did you ask him to send the referrals to  
18 Mr. Schultz?

19 A I think it was -- I'm not sure whether --  
20 because at that time I wasn't sure whether they had  
21 already been contacted out in Kansas by either Jack  
22 Smith or Tom Schultz to get the various documentation

1 of the criminal investigations. I have a general  
2 recollection of having a conversation with Jack Smith  
3 in which he -- I think the beginning of the  
4 conversation was another of his inquiries about the  
5 accounting case which he was using to prepare  
6 responses to the press, but I don't have a clear  
7 recollection of the exact words, but my sense from  
8 him was that he would want everything that was  
9 relevant to Madison to be provided to Tom Schultz as  
10 Tom Schultz did his project.

11 Q So did you ask Mr. Adams to provide the  
12 referrals and the other related material to  
13 Mr. Schultz?

14 A I asked Adams -- or whoever, someone in  
15 Kansas, to forward that material to D.C. I don't  
16 have a clear recollection of whether I told the  
17 Kansas person to send it directly to Schultz or to  
18 send it to me so that I could have my secretary  
19 deliver it to Schultz. I don't remember exactly how  
20 I conveyed that.

21 Q Are you -- in your job as it was at the  
22 time in 1993, was it part of your job to look at

1 criminal referrals?

2 A If they -- well, it depends on the  
3 institution. I mean if we were in the process of an  
4 open civil investigation, certainly I would read --

5 Q Were you in the process of an open civil  
6 investigation on Madison?

7 A No.

8 Q Was it part of your assignment to look at  
9 the criminal referrals in Madison?

10 A Not at that time. Later.

11 Q In 1993, November 1993 it was not; correct?

12 A Correct.

13 Q That is confidential information?

14 A Not within the RTC.

15 Q Really? Criminal referral information can  
16 be disseminated throughout the RTC without  
17 limitation?

18 A Well, I don't know if I would say without  
19 limitation, but to an attorney who had worked in the  
20 professional liability section who had had  
21 responsibility for Madison civil matters over time,  
22 it would be normal to provide that information to

1 somebody in my position at that time.

2 Q But your testimony was that as of November  
3 of 1993, as far as you were concerned in your work,  
4 the Madison matter was closed for two years; correct?

5 A Correct.

6 Q The only involvement you had with Madison  
7 in September and October of 1993 was chasing down a  
8 press inquiry; correct?

9 A A series of inquiries as conveyed by Jack  
10 Smith on the FDIC side, yes.

11 Q And there was an individual named Tom  
12 Schultz who was working for Jack Smith who was  
13 responsible for handling the press inquiries; right?

14 A No. Schultz was working on the evaluation  
15 of Rose Law Firm conflicts or potential conflicts, so  
16 that was what I would characterize as sort of a  
17 government contracts kind of a question. So in order  
18 to further Tom Schultz's open investigation in which  
19 I was a witness, I believe I did encourage the Kansas  
20 people to submit those referrals either to Schultz  
21 directly or to me to give to Schultz.

22 Q So Mr. Schultz had an assignment which

1 required him to look at the referrals; right?

2 A They were arguably relevant, yes.

3 Q You were a witness in that investigation;  
4 right?

5 A Right.

6 Q You were not assigned to participate in the  
7 investigation?

8 A Correct.

9 Q To the contrary, because you were a  
10 witness, it would have been improper for you to  
11 participate in the investigation?

12 A Well, I want to be clear on what you mean  
13 when you say "participate." If I as a witness had  
14 been asked to provide all documents that I have and I  
15 reach out further to somebody else in the agency and  
16 say gee, you may have documents that may also be  
17 responsive, I encourage you to cooperate with  
18 Mr. Schultz's investigation and provide them either  
19 to him yourself directly or to me so that I can give  
20 them to him, then I would not consider that  
21 participating in Schultz's investigation in an  
22 inappropriate way. I would consider that me trying

1 to be responsible and helpful in encouraging people  
2 to transmit arguably relevant material.

3 I have no recollection of anyone in Kansas  
4 ever objecting, ever raising a question, ever pausing  
5 over transmitting those referrals to either me or to  
6 Mr. Schultz for his review.

7 Q If Mr. Schultz -- if Mr. Schultz --  
8 withdraw the question and put it this way.

9 Isn't the fact, Ms. Breslaw, that you  
10 didn't request the referrals to be sent to  
11 Mr. Schultz; you requested them to be sent to you?

12 A I don't remember. If you have  
13 correspondence, I'd be happy to look at it.

14 Q What's been marked as JY 0247 is an  
15 E-mail -- I'll show it to you in a moment -- it's  
16 very brief, to April Breslaw from Philip Adams,  
17 Friday, November 19, 1993. Copies of the nine recent  
18 referrals in the 1992 referral are being sent  
19 priority mail to you this date.

20 Does that refresh your memory?

21 A This shows that Adams chose to send them to  
22 me. I do not recall whether I asked him to send them

1 to me directly or to send them to Tom Schultz. It  
2 shows that this is what he had done but not clearly  
3 what my request was.

4 Q That's arguing. I'm asking whether your  
5 recollection is refreshed.

6 A I'm sorry. My recollection of what?

7 Q Of what you told Mr. Adams.

8 A No.

9 Q So your recollection now is that you may  
10 have told him to send it to Mr. Schultz?

11 A My recollection is that I told them that if  
12 they had not already sent the material to  
13 Mr. Schultz, that they should either send it to me or  
14 send it to him. I do not have a clear recollection  
15 of my exact message, but I have a general  
16 recollection that I thought Schultz may have already  
17 asked them for this material. And if he had already  
18 asked them for it, then there would have been no need  
19 for them to send it to anybody.

20 Q Why would you suggest that they ever send  
21 the material destined for Mr. Schultz to you instead  
22 of to him?

1 A Because they knew me and he was in my  
2 building. I don't have a clear recollection.

3 Q Does he have a secretary?

4 A I assume so.

5 Q Do you have a doubt about whether he gets  
6 his mail?

7 A I have no idea.

8 Q As you sit here, is there any conceivable  
9 reason you can tell me about why you would have said  
10 to them "send it to me and I'll take it up to him"?

11 MR. FOX: Is this within your instructions  
12 not to speculate?

13 MR. CHERTOFF: Yes. I'm asking her to  
14 speculate about her own mental processes.

15 MR. FOX: Speculate if you have any  
16 recollection of it.

17 THE WITNESS: Well, I don't have any  
18 recollection. And I think the records we've looked  
19 at so far do not clarify whether I actually asked  
20 Adams to send things directly to me or not.

21 BY MR. CHERTOFF:

22 Q Did you look at the criminal referrals?

1 A I don't recall looking at them at that  
2 time.

3 Q Did you want to look at them at that time?

4 A Not particularly.

5 Q Were you at that point in time, in the fall  
6 of 1993, concerned that your own actions might become  
7 entangled in all the investigation that was going on?

8 A I had no thought that my actions would be  
9 in any way tangled up with any criminal referral or  
10 criminal investigation then or now. However, at that  
11 time I was already aware that the FDIC was evaluating  
12 the disclosures the Rose Law Firm had made in  
13 connection with being hired to represent us in the  
14 accounting case.

15 To my knowledge, then and now, there is  
16 nothing criminal in any shape or form involved in  
17 that inquiry. So at that time I appreciated that the  
18 process by which the Rose Law Firm was retained as a  
19 contractor was under review at the FDIC, and I was  
20 doing everything I could to be cooperative, even to  
21 the point of encouraging other people to provide  
22 records which may not have even been relevant to



1 Schultz's inquiry. I never had a thought that I  
2 could possibly be implicated in any way and I  
3 continue to have no thought that I could be  
4 implicated in any criminal matter.

5 Q Were you trying to insert yourself into  
6 this investigation?

7 A Which investigation?

8 Q That was being conducted by Mr. Smith and  
9 his office concerning the Rose Law Firm.

10 A No.

11 Q Were you trying to track what was going on  
12 with the criminal referrals?

13 A No.

14 Q Were you afraid of being criticized for the  
15 way you had handled things previously?

16 A Not at all in the form of the criminal  
17 referrals. During the FDIC's investigation of the  
18 hiring of the Rose Law Firm, I suppose that raised  
19 questions in my mind about what their determination  
20 would be about the decision to hire the Rose Law  
21 Firm, but again, that has no bearing on any criminal  
22 matter.

1 Q And the reason -- isn't it a fact that the  
2 reason you called Mr. Donovan and Mr. Clark at the  
3 Rose Law Firm before you -- withdrawn.

4 Isn't it a fact that the reason you called  
5 Mr. Clark and Mr. Donovan at the Rose Law Firm was in  
6 order to try to figure out what they were going to  
7 say about this so you could defend yourself?

8 A No.

9 Q Isn't it a fact that as soon as you tried  
10 to call Mr. Donovan and left a message, practically  
11 the very next thing you did was call Mr. Hubbell?

12 A I don't recall that. My recollection is  
13 that I had one call with Mr. Hubbell and that that  
14 call is reflected the next morning. That's my best  
15 recollection.

16 Q Isn't it a fact that you barely paused  
17 between the time you left your message to call  
18 Mr. Donovan before you picked up the phone to call  
19 Mr. Hubbell?

20 A That's not my recollection and that's not  
21 what's reflected in the phone records that I have.

22 Q Could your recollection be changed by

1 different records?

2 A I suppose so. We're talking about brief  
3 phone calls two years ago. I am very sure,  
4 absolutely, positively sure that I had a total of one  
5 conversation with Web Hubbell during that time. I am  
6 absolutely positively sure that that conversation  
7 occurred after he called me back after I tried once  
8 to reach him. That --

9 Q Didn't you try twice to reach him?

10 A I don't recall trying twice.

11 Q Didn't you play telephone tag with him on  
12 the morning of September 29?

13 A I don't recall that.

14 Q Is it still your testimony that you  
15 hesitated to call Mr. Hubbell because of the fact  
16 that he was the Associate Attorney General?

17 MR. FOX: I don't believe that's ever what  
18 she said. That's only part of what she said.

19 MR. CHERTOFF: Well, all right. I'll  
20 withdraw the question.

21 THE WITNESS: I did not hesitate to call  
22 him because he was Associate Attorney General. A

1 public figure, because he becomes a public figure  
2 does not somehow relieve himself of obligations to  
3 talk to anybody in particular. However, I was not  
4 confident that he would bother to return a call from  
5 me, someone with whom he had not spoken in quite some  
6 time.

7 BY MR. CHERTOFF:

8 Q Is it still your testimony that you wanted  
9 to wait to see if Mr. Donovan would get back to you  
10 before you reached out for Mr. Hubbell?

11 A I believe so. I mean I was trying to get  
12 hold of the two people who were likely to have  
13 responsive information. I believe and continue to  
14 believe that I doubted whether Hubbell would ever  
15 call me back, and so I cannot say with certainty what  
16 the exact pattern of phone calls was two years ago.

17 I think it's not important whether or not  
18 one person or another person left messages with each  
19 other. I think what's important is that I had a  
20 total of one conversation with Hubbell.

21 Q Didn't you come in here an hour ago with  
22 three records which we marked as exhibits so that you

1 could lay out for us in a narrative form your  
2 recollection of exactly how these things occurred?

3 A That's right.

4 Q Are you telling us now that that was not --  
5 that that's not important to you?

6 A Well, what is important to me is not being  
7 entrapped. When I testified before the House Banking  
8 Committee in a deposition, they did not provide me  
9 with any of these records. They asked me an  
10 open-ended general question and I gave my best  
11 recollection almost two years after the fact. Then  
12 we went into a public hearing before the House  
13 Banking Committee and they produced only what we have  
14 marked as Exhibit AAB-02. They did not produce  
15 Exhibit AAB-01, which was produced to the House  
16 Banking Committee at the same time as 002.

17 So I have personally had the experience --  
18 not with you, sir, but with members of the House  
19 Banking Committee and their staffs -- in which they  
20 have questioned me in a deposition, asking me an  
21 open-ended question in which I gave my best  
22 recollection of events that happened almost two years

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1 ago, a deposition in which they had documents but did  
2 not produce them to help me refresh my recollection,  
3 and then I had the public experience of testifying  
4 before TV cameras and everything and being accused of  
5 deceitful behavior by a Congressman who produced only  
6 Exhibit 002 and did not bother to produce 001, which  
7 shows a call to Rick Donovan on the evening of  
8 September 28, 1993 which is consistent with my  
9 recollection.

10 So the best I can tell you, sir, is that  
11 these documents taken together, in fact, all three of  
12 them taken together, provide you with support for  
13 what my best recollection is, but with all due  
14 respect to you, and I realize you're not the people  
15 on the House committee, but after my personal  
16 experience with those others, I am concerned about  
17 games that can be played in this process. So I --

18 Q I just want to be clear. Before you came  
19 here today, did anybody from this committee ask you  
20 to come in and make a presentation with records about  
21 your recollection of how things transpired on the  
22 28th and 29th of September?

1 A No, but when --

2 Q Am I correct that you came in, you had the  
3 records with you, you laid out your recollection  
4 based on the records and said your explanation of  
5 what you had done and when you had done it in a  
6 narrative form? Correct?

7 A I did that, yes.

8 Q In fact, did you collect these records  
9 particularly in order to come here to testify before  
10 us?

11 A No, these -- the telephone records were  
12 provided to me and to all the other RTC people whose  
13 telephone records were taken by the House committee  
14 last May. The E-mail I believe my lawyer received  
15 around the time of the public hearing. I don't have  
16 a clear recollection of when I received this E-mail,  
17 but no, I did not collect these records particularly  
18 to make a presentation to you today.

19 Q But you prepared to make that presentation  
20 before you came here?

21 A I did because in the House deposition, I  
22 sat passively, let them ask me an open-ended

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1 question, what is your recollection about when you  
2 talked to Hubbell and Donovan. I gave my best,  
3 honest recollection of what had happened two years  
4 before. I did not bother to study the telephone  
5 records in anticipation of that deposition. They did  
6 not show me any of these records during that  
7 deposition. Then I got to a public hearing in which  
8 they chose, a Congressman chose, to present only one  
9 part of the records that they had been provided.

10 So again, I apologize to you because I know  
11 you didn't do this, but I did come in here to try to  
12 explain what my recollection is and the evidence that  
13 I have that seems to support that. And I stand by my  
14 recollection.

15 Q Well, okay, I just want to make it clear  
16 that at this point you have had an adequate  
17 opportunity to prepare yourself, in fact you've -- am  
18 I correct that you actually went through an exercise  
19 of preparing yourself on the issue of what had  
20 happened and the sequence of these phone calls, using  
21 these records which you selected so that you could  
22 come in and be prepared to tell it to us?

1 MR. FOX: Wait a minute. Your assumption  
2 is we have all the records. We don't know that we  
3 have all the records.

4 BY MR. CHERTOFF:

5 Q My question to you is, did you, using the  
6 three records that are Exhibits AAB-1 through 2, sit  
7 down and prepare yourself to refresh your  
8 recollection with the sequence of calls, the sequence  
9 of efforts to get in touch with people and the  
10 reasons you carried out that?

11 MR. FOX: You've changed the question.

12 MR. CHERTOFF: I have?

13 MR. FOX: You initially said it was  
14 adequate and what we're saying is we do not represent  
15 to you that we have all of the records in this case.  
16 We have whatever few records the agency --

17 MR. CHERTOFF: I'm not asking you to  
18 represent you have all the records.

19 MR. FOX: Then I just want to make clear on  
20 the adequacy. We're doing the best we can based on  
21 what we got, but this is all we got.

22 BY MR. CHERTOFF:

1 Q Did you sit down with the records you  
2 brought in, AAB-1 through 3, before you came here to  
3 refresh your recollection about the sequence of calls  
4 you had made and why you made that sequence of calls?

5 A I did attempt to refresh my recollection as  
6 to the sequence of calls. I did not particularly  
7 think through why I made phone calls.

8 Q Well, your testimony, and tell me -- do you  
9 recall testifying within the last hour and a half  
10 that you did not call Mr. Hubbell until after you had  
11 spoken to Mr. Donovan and felt that he was not able  
12 to give you a complete answer? Do you remember  
13 giving that testimony here?

14 A I think so. That is my recollection.

15 Q That is your recollection. Is that still  
16 your recollection?

17 A Yes.

18 Q Is that based on the records or based on  
19 something you remember?

20 A That has been my recollection since I was  
21 questioned about this in June of 1995 in a deposition  
22 before House Banking Committee staffers. As I have



1 explained, I had the unpleasant experience of then  
2 going into a public hearing in which it was  
3 attempted -- my recollection was questioned. So I  
4 was puzzled, because in my mind, that is how I  
5 remember it.

6 Q When you tried to reach Mr. Hubbell and you  
7 left a message for him to call back, what was the  
8 message you left?

9 A I don't specifically remember. To the best  
10 of my recollection, I did not speak with him. I  
11 spoke with his secretary. To the best of my  
12 recollection, I would simply have said my name is  
13 April Breslaw, my phone number is what it is, please  
14 ask Mr. Hubbell to call me.

15 Q Did you tell him what it was about?

16 A I don't recall doing that, because again my  
17 recollection is that I was speaking to his secretary  
18 and it would take too long to try to explain the  
19 situation to her.

20 Q Did you tell the secretary it was about the  
21 Madison Guaranty case?

22 A I don't recall.

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1 Q I'm going to show you what's been marked as  
2 Bates 010264 for identification.

3 MR. KRAVITZ: Can I look at it for a  
4 second?

5 MR. CHERTOFF: Yes. Take a look at it.  
6 (Pause.)

7 BY MR. CHERTOFF:

8 Q I'll show it to you in a moment but I'm  
9 going to read it into the record. It is a message to  
10 Judge H., produced by the Department of Justice.  
11 September 28, 6:25 p.m. "April Breslaw of the RTC,  
12 736-0316." I take it that's your number; right?

13 A Yeah.

14 Q "Please call re: Madison Guaranty  
15 Savings."

16 Does this cause you now to realize that you  
17 called Mr. Hubbell within less than 10 minutes after  
18 you left the first message for Mr. Donovan on 6:15 on  
19 September 28?

20 A It does not.

21 Q Do you have reason to believe the records  
22 are incorrect?

1 A I don't know. I'm puzzled by the fact that  
2 you are producing this record in this proceeding and  
3 it was not produced to me through any of the House  
4 proceedings. I don't --

5 Q Ms. Breslaw, the issue is not to have you  
6 argue as an attorney as to why things are produced  
7 and where.

8 The question is whether this causes you to  
9 change your testimony that you did not call  
10 Mr. Hubbell or try to call Mr. Hubbell until after  
11 you had heard from Mr. Donovan and spoken to him.

12 A It does not change my recollection.

13 Q In fact, let's go to your record AAB-1. If  
14 we begin, the circle around the entry for 6:15 in the  
15 evening is your circle; right?

16 A That's correct.

17 Q That's your effort to identify in the  
18 record the call, the first call you made to  
19 Mr. Donovan; right?

20 A I believe so, yes.

21 Q That's something you put on the record  
22 before you came here; right?

1 A Correct.

2 Q And then that call lasts for a minute and a  
3 half, which takes you to about approximately 6:17;  
4 correct?

5 A Yes.

6 Q Then you have a call at 6:20 to Morristown,  
7 which lasts for a little under two minutes which  
8 takes you to about 6:22; right?

9 A Yes.

10 Q And this message to Mr. Hubbell on  
11 September 28 is at 6:25 p.m.; correct?

12 A That's what it says. I have less  
13 confidence in a message taken by a secretary,  
14 people's watches can be different, than in the  
15 computerized records that we're looking at otherwise.

16 Q In fact, would you agree with me that the  
17 message which is 010264, is perfectly consistent with  
18 the record that is AAB-I, because there is a gap at  
19 6:25 within which you could have placed that  
20 telephone call; right?

21 A It's possible but it --

22 Q Let's go further. I want you to get to

1 AAB-2. AAB-2 is a record of all calls made by --  
2 made at your extension, incoming and outgoing;  
3 correct?

4 A That is what I have been told.

5 Q Do you have reason to doubt it?

6 A No, but I want to be clear on the fact that  
7 I did not prepare this record.

8 Q Do you see between 5:13 p.m. and 8:29 p.m.  
9 on September 28, do you see any calls, any outgoing  
10 calls or incoming calls from you?

11 A I'm sorry, on September 28 or 29?

12 Q September 28, which is -- we're talking  
13 about the period between 5:13 and 8:29 within which  
14 this 6:25 p.m. message falls. Do you see any record  
15 of calls from your extension in or out at that time?

16 A Well, there is an incoming call which  
17 strangely shows 0.0 minutes long at 8:29 p.m. on  
18 September 28, 1993.

19 Q And do you see any call in that time period  
20 between 5:13 p.m. and 8:29 p.m. to Mr. Hubbell?

21 A No.

22 Q Is that because you called Mr. Hubbell from

1 someplace other than your office?

2 A Again, my recollection is that the time  
3 that I tried to call Hubbell was the next morning, so  
4 as we have discussed at some length, I don't have a  
5 recollection of trying to call him.

6 Q Now, you --

7 A Excuse me, during the evening of  
8 September 28, 1993.

9 Q Let me go back to page 8. You have  
10 identified a call to Mr. Hubbell that you believe  
11 took place at what time?

12 A 10:57 a.m. on September 29, 1993.

13 Q Did you get a call back from Mr. Hubbell  
14 before then?

15 A I don't believe so, because again, I do  
16 feel strongly that I had a total of one conversation  
17 with Hubbell, regardless of whatever efforts on  
18 either side may have been made to leave messages. I  
19 believe I only had one conversation with him, and to  
20 the best of my recollection, that conversation  
21 occurred a day or so later.

22 MR. KRAVITZ: I'm sorry. I know you want

1 to finish this area, but can I plant in your mind the  
2 idea that some of us would like to take a break?

3 MR. CHERTOFF: I'm going to be literally  
4 done in about two minutes.

5 BY MR. CHERTOFF:

6 Q Let me see if I can refresh your  
7 recollection by observing to you that we have a  
8 record that indicates that at 10:47 a.m., Mr. Hubbell  
9 returned your call. Does that refresh your memory?

10 MR. FOX: That he spoke with her or left a  
11 message?

12 MR. CHERTOFF: Left a message.

13 BY MR. CHERTOFF:

14 Q And that corresponds to a 10:47 entry on  
15 Exhibit AAB-2.

16 A It does not refresh my recollection. I  
17 would also note that in that Exhibit 2, the entry for  
18 the 10:47 a.m. incoming call shows it to have lasted  
19 30 seconds.

20 Q That's right. Enough time to leave a  
21 message.

22 A Correct. But not enough time to have a

1 conversation.

2 Q Does it refresh your recollection that  
3 Judge Hubbell had just called and you picked up the  
4 phone and returned the call and that's what happened  
5 at 10:57?

6 A No.

7 Q How long was your conversation with  
8 Mr. Hubbell when you had it?

9 A At most, five minutes, maybe less.

10 Q Did you feel that was sufficient time to  
11 get the information that you needed to satisfy  
12 yourself about what was necessary for the press  
13 inquiry?

14 A My general recollection is that the things  
15 he had to say were consistent with what Donovan and I  
16 believe Clark had already told me, so I suppose if I  
17 felt I was getting new information, that I would have  
18 wanted to stay with him at more length and try to  
19 find some way to resolve inconsistencies, but my  
20 general recollection is that what he was saying to me  
21 was generally consistent with what I had already  
22 learned from Donovan and Clark and so there was no

1 need to go at any length.

2 And again, you know, we've talked about  
3 this in different contexts. I mean he was more in  
4 control of that conversation than I was, given his  
5 position. I'm not sure that I would have been able  
6 to demand that he stay on the phone for an extended  
7 period of time anyway.

8 Q Was he interested in the conversation?

9 A I don't know if you've ever been in a  
10 situation where you're a client or an in-house  
11 attorney hiring an outside counsel, but often they  
12 sort of adopt a sort of chatty, friendly,  
13 I-would-like-to-get-your-business kind of attitude,  
14 and even though Hubbell at the time was Associate  
15 Attorney General of the United States, for most of  
16 his career, he had been a partner in a law firm and,  
17 so my sense was that it was instinctive to him to  
18 adopt sort of this again sort of business-friendly  
19 tone. And I could not distinguish any particular  
20 interest in Madison as opposed to anything else, but  
21 I came out of that conversation feeling that I would  
22 have gotten about that level of attention from him if

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1 I had called about the Corning Bank case.

2 Q Did you -- I'm almost done, Neil.

3 Getting back to your testimony a little bit  
4 earlier concerning a request by Mr. Smith in November  
5 regarding the criminal referrals where you testified  
6 that you believe you either requested the Kansas City  
7 office to send the criminal referrals directly to  
8 Mr. Schultz or to send them to you to transmit to  
9 Mr. Schultz, I've shown you an E-mail indicating they  
10 were coming to you.

11 Did in fact those criminal referrals come  
12 to you?

13 A I don't remember receiving them at that  
14 time. I don't believe that I attempted to read them  
15 until January of 1994 when the new task force was  
16 started and I had a business reason to do that.

17 Q Do you think it's possible that when you  
18 received -- withdraw the question.

19 Do you think it's possible that you  
20 received copies of the criminal referrals from Kansas  
21 City in November 1993 and then passed them on to the  
22 FDIC?



1 A Yes, I think that's possible.

2 Q I'm going to remind you of your testimony  
3 from the House deposition which was taken I believe  
4 in June, page 146 at line 18.

5 "Question: Did you ever send a copy of any  
6 of the criminal referrals relating to Madison  
7 Guaranty to anyone outside the RTC?

8 "Answer: No.

9 "Question: Nobody at the FDIC, for  
10 example?

11 "Answer: No."

12 A Well, if you had that deposition, you know  
13 that that subject was covered at much more length  
14 later in the deposition when I was shown some  
15 documentation that pertained to the Kansas  
16 transmittal of these documents in November 1993.

17 At the time that I was questioned on the  
18 page you've read from, no one showed me any  
19 documentation and I did not remember that I had -- I  
20 still don't have a clear recollection of what  
21 happened in November of 1993, but I was not informed  
22 or my recollection was not refreshed with

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1 documentation from 1993.

2 So again, that was a situation which I was  
3 asked an open-ended question, I gave my best  
4 recollection of what had happened. Subsequently, the  
5 deposition documentation was provided, and as we sit  
6 here now I can't remember whether it was the E-mail  
7 you just showed me or something else, which seemed to  
8 indicate that criminal referrals had been transmitted  
9 from Kansas to Washington.

10 But because I do not believe, in fact I  
11 should say to you more clearly, I did not read the  
12 criminal referrals until January of 1994, again this  
13 is another example of a very passing incident which  
14 did not stay with me in any significant way, so you  
15 know, I realize you're reading one part of the  
16 deposition but you're not reading to the end.

17 Q But as of September 1993, you in fact  
18 inserted yourself into the process of collecting  
19 information on the issue of Rose and Madison in  
20 response to this press inquiry from Susan Schmidt;  
21 correct?

22 A It was a routine function for professional

1 liability attorneys to gather information in response  
2 to press inquiries and provide that information to  
3 the press office.

4 Q The function was routine, but this incident  
5 was not routine, was it?

6 A Well, I don't really understand what you  
7 mean.

8 Q Well, wasn't this incident so extraordinary  
9 in your mind that within the 24 hours after the call  
10 from Sue Schmidt, you were calling the Associate  
11 Attorney General, you were calling Little Rock, you  
12 were sending an E-mail to Kansas City talking about  
13 David Hale's allegations and you were preparing an  
14 E-mail to Steven Katsanos, laying out why you thought  
15 that Sue Schmidt ought to be persuaded to drop this  
16 story? Didn't all those things happen in the 24  
17 hours after Sue Schmidt made that call?

18 A I believe that the E-mail to Beth McClain,  
19 Janet Sheldon and Julie Yanda was not sent because of  
20 a press inquiry. I am unclear on why I would have  
21 sent that. It may be that it was because they had  
22 questions about whether the records which they had

1 asked me to copy were being sent yet, and I think  
2 there is more reference to the record copying in that  
3 E-mail than anything else.

4 So I think you're blurring together  
5 different things that were happening at that time  
6 frame, and I will tell you that in my experience,  
7 when press inquiries come in, it is not extraordinary  
8 to make a couple of phone calls and provide a summary  
9 E-mail to the press office with information.

10 Q And on the E-mail to Ms. McClain you just  
11 testified about in your last answer, which concerns  
12 records, isn't it a fact that you insert into that  
13 your observation about having heard that several  
14 criminal defendants have made allegations against the  
15 Clintons or the Rose firm?

16 A If that's what the document says, that's  
17 what it says.

18 MR. CHERTOFF: This is a good time to break  
19 for lunch.

20 (Whereupon, at 1:27 p.m., the deposition  
21 was recessed, to be reconvened at 3:00 p.m. this same  
22 day.)

1 AFTERNOON SESSION (3:06 p.m.)

2 Whereupon,

3 APRIL A. BRESLAW

4 resumed the stand and, having been previously duly  
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. CHERTOFF:

8 Q Back on the record.

9 After you -- withdraw the question.

10 Is there anything you've testified about in  
11 the session this morning that you want to amend?

12 A No.

13 Q Has Mr. Hubbell ever been at the PLS  
14 offices?

15 A Yes.

16 Q When was that?

17 A Sometime in 1993. I do not remember the  
18 date. There is another lawyer in my section named  
19 William Small who I believe went to law school with  
20 Mr. Hubbell, and my recollection is that Mr. Small  
21 invited Mr. Hubbell to speak at one of our section  
22 staff meetings, and he did come to speak at the

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1 meeting.

2 Q Was it during the summer or during the  
3 fall?

4 A I don't have a clear recollection of when  
5 it happened. I have a general recollection that Bill  
6 Small told us that Hubbell was still distressed over  
7 Foster's suicide and that no one should ask any  
8 questions about that, so that recollection makes me  
9 think it must have been sometime after Mr. Foster  
10 passed away, and I don't remember that date either.

11 Q Did he come back on a second occasion  
12 afterwards?

13 A Not that I recall.

14 Q What did he talk about?

15 A He talked about the process for being  
16 confirmed as Associate Attorney General. He talked  
17 very generally about what his duties were. That's  
18 all I can recall.

19 Q Did he ever talk to people in the  
20 professional liabilities staff in a meeting and  
21 indicate that if they were to encounter difficulties  
22 in producing material pursuant to a subpoena or

1 anything else around the country, they should always  
2 feel free to let him know?

3 A I don't remember him specifically saying  
4 that. He was, I suppose, friendly toward the  
5 section. I don't recall anybody asking that  
6 particular question.

7 Q What about generally? Did he discuss the  
8 issue of producing documents pursuant to subpoenas  
9 generally?

10 A I don't recall.

11 Q Do you know if anybody ever called him to  
12 get his help in terms of a dispute with the U.S.  
13 Attorney's office about any issue?

14 A I don't -- I don't have any personal  
15 knowledge of that.

16 Q Do you have any indirect knowledge of that?

17 A No.

18 Q Now, what's the next involvement you had  
19 with respect to Madison Guaranty after November 19,  
20 on or about November 19 when there is some discussion  
21 regarding getting the criminal referrals up to  
22 Mr. Schultz?

1 A What do you mean by "involvement"?

2 Q Discussion, interaction, action of any kind  
3 with respect to Madison Guaranty after on or about  
4 November 19.

5 A As best as I can recall, the next  
6 Madison-related thing that involved me was the  
7 receipt by Tom Hinds of Iorio's report on civil  
8 claims. I do not recall specifically when that came  
9 in. I generally recall that the report is dated  
10 sometime in December of 1993, so it would have been  
11 shortly after it was received.

12 Q And what happened?

13 A Tom showed me the report. He seemed  
14 annoyed that the project had been done. He asked me  
15 if I knew anything about it. I told him I did not.

16 Q What happened then?

17 A Well, nothing happened with regard to that  
18 report. At some point in the winter of 1994 -- and I  
19 don't remember exactly when -- I think I approached  
20 Tom about trying to set up some kind of a meeting  
21 with the Kansas people, particularly Iorio, to try to  
22 understand why they had done this, and --

1 Q Why did you want to set up a meeting like  
2 that?

3 A Well, my perception at the time was that  
4 they had wasted taxpayer money going back over an  
5 area which had not only been closed pursuant to my  
6 recommendation in 1990 but prior to that, Mr. Gerish,  
7 who we have discussed a bit, submitted a report I  
8 think before Madison was closed which recommended not  
9 pursuing civil claims because of lack of recovery  
10 sources.

11 The FDIC investigator Hemmerly had made  
12 that same recommendation. I had made that  
13 recommendation which had been approved by I believe  
14 Mr. Beatty and Mr. Dudine in 1990, and we were in a  
15 situation where the civil claims had been looked at  
16 several times by different people and each time the  
17 people who had looked at it had concluded that there  
18 were not adequate recovery sources to justify  
19 pursuing civil claims.

20 Then in December of '93, Tom receives what  
21 I understood to be, and as far as I know was an  
22 unsolicited report from Iorio which reflected work

1 done by his office on potential civil claims. And as  
2 we've discussed, by that time the tort statute of  
3 limitations had expired.

4 So to me, the rational thing to do was to  
5 try to talk to the people who had worked on this, try  
6 to understand why they had done this and -- to me it  
7 almost seems insulting to receive a report from  
8 somebody and throw it in a drawer. It seems like the  
9 professional thing to do is to try to come to an  
10 understanding of why the report was submitted and  
11 particularly since my understanding from Tom was that  
12 at least at that point in time, no further action was  
13 planned, that that decision should be explained to  
14 them.

15 Q Who was the report directed to?

16 A My recollection is that it was addressed to  
17 Tom Hinds and Jim Dudine.

18 Q And how did it get to you?

19 A Tom showed it to me.

20 Q Was it Mr. Hinds's suggestion that there  
21 be a meeting with the Kansas City personnel to  
22 discuss why they had done the report?



1 A No.

2 Q Whose suggestion was that?

3 A That was my suggestion, which he rejected.

4 Q And you made the suggestion to have a  
5 meeting because you felt that they had wasted  
6 taxpayers' money?

7 A Well, that would be part of it, but I  
8 really -- I was not trying to criticize them  
9 necessarily, but to make at least a try at  
10 understanding why they had done this, to see if there  
11 was anything further that could be done and if the  
12 decision was that despite their work and their  
13 report, that nothing further was going to be done by  
14 the professional liabilities section on civil matters  
15 regarding Madison, that that would be discussed with  
16 them.

17 Q Why did you feel a need to discuss with  
18 them what further work they would do when they were  
19 not an office under your supervision?

20 A Well, the individual investigators  
21 generally were under the supervision of the  
22 particular professional liability attorney working on

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1 a particular institution. It's a less than  
2 militaristic situation. I suppose if one was asking  
3 about who did performance appraisals and had that  
4 kind of supervisory role, then the answer would not  
5 be the professional liability attorney.

6 But in a way, the relationship was similar  
7 to my understanding of the relationship between an  
8 Assistant U.S. Attorney and an FBI agent, which at  
9 least to my understanding involves the Assistant U.S.  
10 Attorney directing what the FBI agent is doing.

11 So to me, it seemed that we had a group of  
12 investigators who had done something that, at least  
13 to me at that time, seemed to be a waste, and my  
14 understanding was that Tom felt even more strongly  
15 that it had been a waste of time, so to me it seemed  
16 that the appropriate thing to do was to try to --

17 Q Spend more time on it?

18 A It was worth at least a meeting to  
19 understand why it had been done and to help them, if  
20 they could be helped, to understand why we thought  
21 this was inappropriate so that they would not do this  
22 again.

1 Q Were you concerned that they might generate  
2 more reports or investigative activity directed at  
3 Madison?

4 A I had no reason to think that at that time.

5 Q Had you worked with these investigators in  
6 Kansas City on Madison when you were involved in  
7 handling the Madison case?

8 A No. At that time Madison -- in fact I  
9 think all of Arkansas was gerrymandered into the  
10 Minnesota investigative office. I believe that  
11 office closed in 1992, and at that point what was  
12 left of those responsibilities was transferred to  
13 Kansas, but as we have discussed, the accounting case  
14 had previously been sent over.

15 Q So you never had actually worked with those  
16 investigators on this matter, on Madison?

17 A Correct, yes.

18 Q And from your standpoint, you had closed  
19 your work on Madison in 1991?

20 A Yes.

21 Q And from that time on, your work or your  
22 official duties in connection with Madison consisted

1 of responding to press calls and press inquiries;  
2 correct?

3 A Yes.

4 Q Asking someone from Kansas City to send  
5 criminal referrals to Mr. Schultz either directly or  
6 through you?

7 A Yes.

8 Q Contacting the Rose Law Firm to find out  
9 what you could about the subject of press inquiries?

10 A Yes.

11 Q And getting a copy of a report being done  
12 by the Kansas City investigators about a matter that  
13 you had closed in your own work two years earlier;  
14 correct?

15 A Yes.

16 Q So you had no actual operational or  
17 investigative responsibility for Madison in the fall  
18 and winter of 1993 at the time that this report came  
19 down?

20 A That's true.

21 Q And your position was nevertheless that you  
22 went to Mr. Hinderes and suggested that you and

1 Mr. Hindes and the people in Kansas City meet in  
2 order to discuss whether or not they should take any  
3 further action?

4 A Well, I think two things should be  
5 understood. First of all, it's important to  
6 underscore that I went to Hindes before doing this  
7 because I recognize that I did not have direct  
8 supervisory authority over, for example, Mr. Iorio,  
9 so I did not try on my own to do anything here.

10 But I believe then, and I continue to  
11 believe now, that it's not appropriate if one  
12 observes people doing something that one believes is  
13 a waste of time to simply ignore it and run the risk  
14 that they will do something equally inappropriate in  
15 the sense of working on projects that the lawyers who  
16 are supposed to be directing them do not consider to  
17 be worth their time, because obviously they have a  
18 finite amount of time to spend, and if they're not  
19 working -- if they are working on something they're  
20 not supposed to be, then that may mean that they're  
21 not doing tasks that we really want them to be doing.

22 Q Were there particular tasks that they

1 were -- you wanted them to do that they weren't  
2 doing?

3 A I had had a very bad experience with the  
4 Kansas office during the spring of 1993 in connection  
5 with Midwest Federal Savings, which is the Minnesota  
6 institution that I mentioned earlier.

7 Q In December 1993 --

8 MR. FOX: Wait a minute. Let her answer  
9 the question.

10 MR. CHERTOFF: It's a little bit beyond  
11 scope of the question.

12 MR. FOX: No, it's not. You asked if she  
13 had any experience with things they weren't doing and  
14 she's telling you.

15 THE WITNESS: I had a dreadful experience  
16 with that office in which they had committed to do a  
17 project involving calculating damages on some fairly  
18 complicated transactions. We had a discovery cutoff  
19 and they failed. They completely failed to do what  
20 they were expected to do. As a result, we faced  
21 sanctions by the court. We had to hire an outside  
22 expert at great expense at the last minute in order

1 to meet our obligations in the directors and officers  
2 liability lawsuit that that involved.

3 So I had had a personal experience with  
4 people in that office, supervised by Mr. Iorio, who  
5 had committed to do an important and necessary task  
6 and had failed to do it. Subsequently, this report  
7 on Madison issues came in, which seemed to raise the  
8 possibility anyway that they had been off doing  
9 things that, at least to my understanding at the  
10 time, were a waste of taxpayer money.

11 So when I look at those two things, to me  
12 it seems like a failure to appropriate -- a failure  
13 on Iorio's part to appropriately supervise that  
14 office and make sure that necessary tasks get done.

15 BY MR. CHERTOFF:

16 Q When was the incident with respect to the  
17 failure to produce the damages computation?

18 A Sometime in the spring of 1993.

19 Q What does that mean in terms of months?

20 A Oh, perhaps six months, seven months. I  
21 don't remember exactly.

22 Q Like around March?

1 A Perhaps.

2 Q At that time did you explain to somebody  
3 about the failure to perform this work?

4 A My main emphasis at that time was getting  
5 another expert hired and getting the job done.

6 Q Is that a no?

7 MR. FOX: Wait a minute. Why don't you let  
8 her answer the question.

9 MR. CHERTOFF: No, it's not responsive.

10 MR. FOX: You're playing games here. You  
11 don't want to find the truth. You're playing games  
12 here.

13 MR. CHERTOFF: Mr. Fox --

14 MR. FOX: Why don't you let her answer the  
15 question.

16 MR. CHERTOFF: I asked her a question that  
17 really called for a yes or no.

18 MR. FOX: You know as well as I know that  
19 every question that calls for yes or no can't be  
20 answered yes or no: Have you stopped beating your  
21 wife?

22 MR. CHERTOFF: I don't think I asked that

1 question.

2 MR. FOX: Why don't you let her explain.

3 MR. CHERTOFF: Let me get the answer first  
4 and then she can explain.

5 BY MR. CHERTOFF:

6 Q When this earlier incident occurred in  
7 approximately March of 1993, did you complain to  
8 somebody about the way in which the Kansas City  
9 office had handled the matter?

10 MR. FOX: Now answer the question the way  
11 you want to answer it.

12 THE WITNESS: To the best of my  
13 recollection, I did complain to David Eisenstein, who  
14 was my immediate supervisor at that time. To the  
15 best of my recollection, there was an exchange of  
16 E-mails between him and supervisors in the Kansas  
17 office, I believe it was Mike Van Valkenberg was  
18 someone who was involved in this. The main emphasis  
19 at that time was not on criticizing people but  
20 instead on finding a way to get the job done so that  
21 we would not be sanctioned by the court.

22 But yes, at that time I did complain to

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1 David Eisenstein.

2 BY MR. CHERTOFF:

3 Q And what was -- did you ever learn the  
4 reason that this work hadn't been completed?

5 A My understanding ultimately from Eisenstein  
6 was that the investigators had not appropriately used  
7 their time and had simply made mistakes in judgment  
8 about how long it would take them to do something and  
9 had therefore failed to get the work done on time.

10 Q And this discussion you had with  
11 Mr. Eisenstein occurred in the spring of 1993?

12 A To the best of my recollection, yes.

13 Q Now, on this occasion with respect to the  
14 report that came in from you in December, did you  
15 have a pending matter in Kansas, in the Kansas City  
16 office that you weren't happy with in terms of the  
17 way it was being handled?

18 A I believe that the same Midwest directors  
19 and officers lawsuit was still pending in December of  
20 1993. To the best of my recollection, we had had a  
21 further problem wherein we had settled with one  
22 individual. He had committed to pay us over time.



1 He had failed to do what he was supposed to do. The  
2 investigators had insisted on taking responsibility  
3 for collecting the money, and they had not set up an  
4 appropriate tickler system, so they missed the fact  
5 that he had stopped making payments, and we found out  
6 about this from one of his other creditors.

7 This was an individual who was in  
8 bankruptcy and had made these kinds of arrangements  
9 in the course of resolving various either adversary  
10 proceedings or other claims against him in the  
11 bankruptcy.

12 So we found out from other creditors that  
13 he was not paying and it turned out that our own  
14 people had not kept track of his payments.

15 Q Where were the payments supposed to go?

16 A At that time, to Kansas.

17 Q Where in Kansas? Do they have a lock box?

18 A Well, that was their responsibility. They  
19 were insisting on taking responsibility for this. I  
20 don't know what arrangements they made, if any, to  
21 get them.

22 Q What do you mean when you say they insisted

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1 on taking responsibility? Isn't there a general  
2 mechanism by means of which the RTC gets paid money  
3 that's owed to it?

4 A No.

5 Q You mean every office has its own way of  
6 handling it?

7 A Yes.

8 Q And the responsibility for how payments are  
9 managed and accounted for is a separate issue with  
10 every office?

11 A It is -- I should say it was in 1993. It  
12 is my understanding generally that the RTC's books  
13 were unauditable by the General Accounting Office and  
14 that at some time in 1994, that systems were  
15 changed. So today, there are better systems.

16 Q Is it your testimony that your reason for  
17 going to Mr. Hindes and raising the issue of why this  
18 report had been prepared by the investigators in  
19 Kansas City had nothing to do with the fact that you  
20 felt you were being second-guessed and were being  
21 defensive about it?

22 A It's been a long time since I've looked at

1 that December report. To the best of my  
2 recollection, it reached the identical conclusions  
3 that I had reached, which was primarily that there  
4 was no point in going forward with director and  
5 officer liability claims because there was a lack of  
6 resources to support that.

7 I believe in that time frame, I was  
8 irritated that my files had been requested in the  
9 summer by Julie Yanda, and that my understanding at  
10 that time was that they were being taken to support  
11 criminal referrals and possible Freedom of  
12 Information Act requests, but it appeared to me when  
13 the December report came in that those files had also  
14 been used in the course of the investigators' sort of  
15 fourth look at potential civil claims.

16 To the best of my recollection, I was  
17 irritated at the way that had happened, and I felt  
18 that I had been essentially deceived, either by Julie  
19 Yanda or by the Kansas investigators.

20 It was not clear to me then and it's still  
21 not clear to me whether Yanda knew what purpose the  
22 files were going to be used for in the fall of 1993

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1 or not, so that is -- to the extent I was irritated,  
2 it was at the way that seemed to have happened.

3 Q Wasn't it Jim Thompson who was a vice  
4 president of the RTC that asked for this what you've  
5 described as fourth look?

6 A I have heard that.

7 Q Have you said it?

8 A It seems to me -- I'm trying to remember.  
9 I don't remember the exact dates, but it seems to me  
10 that after the December report came in, that I had a  
11 conversation with Julie Yanda and it may be that at  
12 that point Julie told me that JT had asked for this  
13 and that -- at some point I think JT called me and  
14 apologized for the way that project had been done.

15 Q Now, JT is Mr. Thompson?

16 A Excuse me, yes.

17 Q What was his position?

18 A His position has changed over time.

19 Q What was his position in 1993 in the  
20 winter?

21 A I think he had some supervisory  
22 responsibility over Iorio's office.

1 Q Was he a vice president?

2 A He may have been.

3 Q Is that a high-up position?

4 A It's an executive position. I don't know  
5 off the top of my head how many vice presidents there  
6 are or were.

7 Q Did you ever question him about why he had  
8 requested to have this review done?

9 A Again, I believe he and I had one  
10 conversation. I believe it was in December of '93,  
11 and I believe we must have discussed why this had  
12 been done, but I don't have a clear recollection of  
13 his response. I mean I don't know.

14 Q Do you feel that the fact that this report  
15 was done in the winter of 1993 was a criticism of  
16 you?

17 A I did not feel that the report itself was a  
18 criticism of me, but I was mildly insulted that the  
19 files had been obtained in the way that they were. I  
20 felt that there was an element of deception in that,  
21 and I really did not understand why the investigators  
22 didn't just call me themselves and get the files.

1 Q Did you feel that the fact that the review  
2 was asked for was in itself a criticism of you?

3 A No, because the -- over and over again,  
4 people had reached the identical conclusion. Mike  
5 Heinmerly had reached the same conclusion, that there  
6 were inadequate assets to support a civil lawsuit. I  
7 reached that conclusion and made a recommendation. I  
8 did not have authority ever to officially close an  
9 investigation. Instead, it was my supervisors,  
10 Mr. Beatty and Mr. Dudine, who accepted my  
11 recommendation and authorized the closure of it.

12 And also again, if we're talking about  
13 closing out an investigation because of lack of  
14 recovery sources, I think everybody in my  
15 organization understands that it is typically not the  
16 lawyer's job to go out and do asset searches, to do  
17 financial analysis to try to come to some  
18 understanding of people's net worth or other recovery  
19 sources, that for that task we primarily and always  
20 have relied on the investigators to do that. So I  
21 don't know what work of mine would be susceptible to  
22 criticism there.

1 I took the financial analysis that previous  
2 investigators had done, had no reason to question  
3 it. There was nothing that I can recall that was  
4 noticeably wrong with it, and made a recommendation  
5 which my supervisors approved.

6 Q Is the reason you called the Rose Law Firm  
7 in September of 1993 because you felt you wanted to  
8 be able to defend yourself against possible negative  
9 story in the press?

10 A No.

11 Q Is the reason that you complained about  
12 this investigation to Mr. Hinds or this review to  
13 Mr. Hinds, because you felt that the only reason  
14 they were going back to a closed case was to question  
15 the decisions that had been made before?

16 A Well, I don't know what document you're  
17 reading from. I don't recall saying that. If you  
18 have something that shows that, I would like to see  
19 it.

20 Q I'm just -- putting aside what you think  
21 I'm reading or what I have, I'm asking you the  
22 question.

1 Let me ask that it be reread.

2 (The reporter read the record as requested.)

3 THE WITNESS: First of all, as I've  
4 testified, Mr. Hinds received the report and showed  
5 it to me and it was him that was initially irritated  
6 and concerned about it. So as a matter of the first  
7 part of your question, I disagree with your word  
8 "complained" because that implies that I initiated  
9 the discussion about this report.

10 Secondly, because the decisions that had  
11 been made were not just my decisions, they were the  
12 decisions of the RTC, one way to interpret, and I  
13 believe that -- to the best of my recollection, that  
14 what could have been on my mind is that these  
15 investigators in Kansas didn't seem to understand  
16 that if they went back over decisions which had been  
17 made by senior people and raised questions about it,  
18 that the RTC generally could be criticized if they  
19 had done something inappropriate.

20 So I disagree very much with your  
21 suggestion that I was in any way concerned about  
22 myself, but I did and do feel strongly that it was an

1 inappropriate use of the investigators' time to go  
2 back over this.

3 BY MR. CHERTOFF:

4 Q How did you feel about it when the FDIC  
5 began its inquiry into the conflict with the Rose Law  
6 Firm. Did that irritate you, too?

7 A I would not use the word "irritate." That  
8 was a shade more threatening because I did and do  
9 take responsibility for hiring the Rose Law Firm to  
10 represent the government in the Frost case, so I  
11 would not characterize my feeling as irritated, but  
12 I --

13 Q Threatened?

14 A Mildly, yes.

15 Q Now, when did you first get assigned to go  
16 out to Kansas City to do a review on site with other  
17 people that would involve interacting with the  
18 investigators out there?

19 A Well, on -- it would have been about 5:00  
20 in the evening of the day before I went, so I believe  
21 that was February 1, 1994. And I would not describe  
22 the purpose of my trip in the way that you did.

1 Q What was the purpose of your trip?

2 A The purpose of my trip was to see if I  
3 could gather any further information on a series of  
4 assignments that by that time I had in connection  
5 with the reopened civil investigation in 1994.

6 Q When was it reopened?

7 A I believe it was reopened in January of  
8 1994. I do not remember the exact date.

9 Q By whom?

10 A I believe that it was Ellen Kulka's idea.  
11 By that time, she had become general counsel of the  
12 RTC.

13 Q Now, was this the fifth review of your  
14 work?

15 MR. FOX: Objection. She never said --  
16 this is not a review of her work. You know that.

17 BY MR. CHERTOFF:

18 Q Was this the fifth investigation of this or  
19 the fifth review of this matter?

20 A Jeffrey Gerish did a review for the bank of  
21 both the merits and the cost-effectiveness. Mike  
22 Hemmerly, an FDIC investigator, did that same sort of



1 review. I accepted Hemmerly's conclusions and wrote  
2 a recommendation I believe in 1990, which was  
3 accepted by Beatty and Dudine. Then Iorio's group in  
4 the fall of 1993 did their review. In none of those  
5 was I a target. In fact, I had no participation in  
6 Gerish's review. I certainly was not any kind of a  
7 target in Hemmerly's review. So nobody was  
8 rereviewing my work.

9 But the question of whether civil claims  
10 should be pursued by the RTC against former Madison  
11 professionals was -- that investigation was reopened  
12 in January of 1994, and by my count, that was the  
13 fifth time the government had spent resources on  
14 that.

15 Q You've testified a few moments ago that you  
16 believed that the fourth review of Madison by the  
17 investigators in Kansas City was a waste of  
18 taxpayers' money. Does it follow that you believe  
19 this fifth review was also a waste of taxpayers'  
20 money?

21 A Well, in late December 1993, Congress  
22 passed the RTC Completion Act. One aspect of that

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1 legislation was that it extended statutes of  
2 limitation, so at least in January 1994, there was  
3 not an absolute legal defense to civil claims as  
4 there was in 1993, which was a period in which the  
5 previous statute had expired and the new one had not  
6 been extended.

7 In terms of pure cost issues, it is my  
8 current understanding -- and I have to tell you, I  
9 don't have a clear recollection of when exactly I  
10 found this out -- but it is my current understanding  
11 that various of the Madison individuals had been  
12 discharged in bankruptcy. I believe that  
13 Mr. McDougal was long discharged in bankruptcy and  
14 various other of the key people.

15 So if you're dealing with potential targets  
16 whose financial situation was so bad that they had  
17 been discharged in bankruptcy and particularly had  
18 been discharged in bankruptcy over a year before,  
19 then it's difficult to see how anybody could pursue  
20 them for tort claims which would have been  
21 discharged -- with liability would have been  
22 discharged in the course of their bankruptcy.

1           So in terms of a waste of taxpayer money, I  
2 would say it raised questions to me at that time,  
3 given that the consistent conclusion by different  
4 people, even as to January 1994, was that nobody had  
5 enough money to make civil litigation worthwhile.

6           I would say that at that point I had a  
7 question about the cost-effectiveness, and my  
8 personal questions only deepened over time as I  
9 learned more about how bad the financial  
10 circumstances were of the targets.

11       Q    Was the Rose Law Firm in bankruptcy in  
12 1994?

13       A    No, not to my knowledge.

14       Q    When did the extension of the statute of  
15 limitations first arise as a proposal in Congress?

16       A    I have no idea.

17       Q    So you don't know whether in fact in the  
18 fall, that extension was on the table in Congress?

19       A    I don't know.

20       Q    And when you formed your opinion about the  
21 wastefulness of the late 1993 review of Madison by  
22 the Kansas City investigators, you don't know whether

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1   at that point there was in fact a proposal to reopen  
2 the statute of limitations, do you?

3       A    Neither did the Kansas people.

4       Q    How do you know that?

5       A    None of them ever once suggested even in  
6 that report that potential claims could be brought  
7 because the statute might be extended.

8       Q    So that's your basis for saying that they  
9 were unaware of such a thing?

10       MR. FOX: Is your suggestion here that  
11 it's -- I just want to know -- a proper use of the  
12 government resources to investigate matters beyond  
13 the statute of limitations on the possibility that  
14 the statute might be extended subsequently? It would  
15 be very interesting to know if that's really your  
16 position.

17       MR. CHERTOFF: I don't think my position is  
18 an issue.

19       MR. FOX: But it's silly. You're asking  
20 silly and stupid questions in order to make a  
21 partisan point. Why don't you -- it's ridiculous.

22       BY MR. CHERTOFF:

1 Q Now, when you went out to Kansas City on  
2 February 1, you had in mind your general attitude to  
3 these issues of these reviews of Madison; correct?

4 A That was not foremost in my mind by any  
5 means.

6 Q But it was in there somewhere?

7 A It was almost six weeks after the fact, and  
8 I had very pressing assignments at that time directly  
9 to handle.

10 Q Who assigned you to go out to Kansas City?

11 A Mark Gabrellian.

12 Q Did he come to tell you how you were picked  
13 for it?

14 A No.

15 Q Did you volunteer for it?

16 A No.

17 Q Did you discuss with him before you went  
18 whether you wanted to go?

19 A Again, the context was him appearing at my  
20 door at 5 p.m. the night before. That particular  
21 winter was the winter of 1994, was a very harsh  
22 winter, a lot of snow and cold and all that.

1 My recollection is that Ellen Kulka was  
2 very preoccupied with the weather and with delays and  
3 was concerned that we would not be able to get  
4 documents if we requested things and asked for them  
5 to be sent to us.

6 So my general recollection of my  
7 conversation with Gabrellian is that he asked me to  
8 go, that I asked whether it was really necessary for  
9 me to go that quickly; in other words, go the next  
10 day, and that his response to me was that Kulka was  
11 concerned about the weather and therefore wanted  
12 things -- wanted us to go to the documents and wanted  
13 this whole project to move very quickly.

14 Q What in your mind was the purpose of going  
15 there?

16 A To gather information on the particular  
17 assignments that I had.

18 Q What were your assignments?

19 A I was trying to come to an understanding of  
20 a transaction called Maple Creek Farms. I was -- by  
21 that point I feel that I had been assigned some  
22 responsibility for understanding the bankruptcy

1 status of various of these potential targets. I  
2 believe that I was assigned responsibility for  
3 figuring out whether the institution had indemnified  
4 any of the potential targets, which could create a  
5 defense for them. Oh, and yeah, of course I was also  
6 trying to figure out whether the Whitewater checking  
7 account had caused a loss.

8 Q Who gave you that assignment?

9 A Gabrellian.

10 Q What did he say to you concerning that  
11 assignment?

12 A He had given me that assignment several  
13 weeks before, and I don't remember him saying  
14 anything particular about it. He had assembled a  
15 team of people to which he was handing out  
16 assignments. And that -- I don't remember him making  
17 any particular comment about it.

18 Q Were you aware at the time you got the  
19 assignment that the Whitewater transaction involved  
20 the Clintons?

21 A I don't remember.

22 Q Wasn't it all over the newspapers?

1 A What's difficult at this point is  
2 remembering when I have learned things. I know that  
3 the criminal referrals had been submitted to Justice  
4 by then, and I believe that the Whitewater account  
5 was one of the things raised by those referrals. And  
6 I also have the general recollection that Mr. Fiske  
7 was in the process of being appointed in that time  
8 frame. I don't think he would have been appointed  
9 but for the possible political aspects of this.

10 Q Wasn't he pointed because the name with the  
11 conduct of the President and First Lady had come up  
12 in the context of Whitewater?

13 A I think so.

14 Q Do you have a doubt about that?

15 A I'm not sure. I don't know what the  
16 independent counsel report says.

17 Q Wasn't Mr. Fiske appointed in mid-January  
18 of 1994?

19 A That sounds about right.

20 Q Wasn't it all over every newspaper in  
21 Washington that he was appointed to look into the  
22 Clintons' involvement in Whitewater?

1 A Well, I don't read all the newspapers in  
2 Washington. I'm not disputing it. I mean, that  
3 sounds like the right time frame.

4 Q Weren't you very conscious of the press on  
5 this issue of the Clintons?

6 A I don't remember -- I mean, I don't  
7 remember.

8 Q Weren't you conscious in September 1993  
9 when you were E-mailing about press inquiries  
10 involving the Clintons and attention from the  
11 national media?

12 MR. FOX: No reference to Whitewater in  
13 that.

14 BY MR. CHERTOFF:

15 Q Were you conscious of the media when you  
16 were E-mailing in September 1993 about press  
17 inquiries concerning Hillary Clinton and the Clintons  
18 attracting attention from the national media?

19 A As we have discussed at some length, I  
20 personally received an inquiry from the press in  
21 September 1993, and that was in the context of the  
22 Rose Law Firm issues. Mrs. Clinton was a partner at

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1 the Rose Law Firm, so certainly I was aware of the  
2 inquiry that had come in to me in September 1993, but  
3 I would not characterize myself as particularly  
4 preoccupied with the press in January 1994.

5 Q Did your press interest in January slacken  
6 from what it had been in September?

7 A Well, there's -- in September, again, as we  
8 have discussed at some length, I had the personal  
9 experience of being contacted by the press. I'm sure  
10 that like anybody who reads the newspaper, I read  
11 whatever was there in that time frame in 1994, so I  
12 would not characterize myself as disinterested, but I  
13 had no, as we have discussed, day-to-day  
14 responsibility for dealing with the press so --

15 Q In January 1994, weren't you particularly  
16 interested in press stories about Whitewater?

17 A No.

18 Q Did you ever analyze press stories about  
19 Whitewater or discuss them with your colleagues in  
20 January 1994?

21 A I think in that time frame, and I don't  
22 remember the exact date, that there was a story in



1 one of the magazines, something like the New Yorker,  
2 Harper's, something like that, that I happened to see  
3 because a friend of mine gets that magazine, and it  
4 seems to me that I read that particular article and  
5 may have summarized it, because it seemed to me, at  
6 least as best that I can recall, that it was a pretty  
7 accurate summary of what was known at that time. But  
8 that was one particular article, and I certainly  
9 didn't keep any scrapbook of articles or search NEXUS  
10 or LEXIS or press inquiries.

11 Q Did you summarize the article and pass it  
12 on to your colleagues as something to be borne in  
13 mind as the matter of Madison Guaranty continued to  
14 be studied?

15 A Well, you seem to be reading from a  
16 document. I don't know what that is.

17 Q Again, I caution you, Ms. Breslaw, not to  
18 worry about what I'm looking at.

19 MR. FOX: When you're obviously reading  
20 from a document and asking and appear to be quoting  
21 it, that really is kind of a sorry old trick.

22 MR. KRAVITZ: I have to say, Mike,

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1 particularly in light of this morning with the phone  
2 records in your back pocket, I really think if you  
3 want to ask her whether she wrote something in the  
4 document, you ought to show it to her.

5 MR. CHERTOFF: I want to go on the record,  
6 which I rarely do in response to that, Ms. Breslaw  
7 came in here with three records and she asked to make  
8 a statement, setting forth her recollection refreshed  
9 with the records about the way in which she had  
10 contacts -- she ordered or sequenced her contacts  
11 with the Rose Law Firm and Mr. Hubbell. I did not  
12 even ask a question about it at that point.

13 Having chosen to come out front with this  
14 version of events, I don't think it's fair to  
15 criticize me because it turns out that the witness  
16 misjudged the fact that there might be contradictory  
17 records.

18 MR. FOX: Wait a minute, wait a minute.  
19 That's an improper remark and you know it. She gave  
20 her best effort to look through the only records we  
21 had to try to reconstruct something. To say that she  
22 misjudged and implying that she didn't realize there

1 was some record that was going to contradict her  
2 because she knew she was saying something wrong is  
3 totally inappropriate and no evidence to back that up  
4 or to suggest that. She gave her best effort to try  
5 to deal with a situation which has been in  
6 controversy in many of the 11 different times that  
7 she's had to either be interviewed or give testimony  
8 about this subject, and that's all she did.

9 MR. CHERTOFF: What the record is going to  
10 reflect is that the witness volunteered to give us  
11 her rendition of what had occurred on September 28  
12 and September 29. It was not elicited in response to  
13 questioning.

14 MR. FOX: That's correct, and you sat there  
15 with the document in your hand when she was trying to  
16 reconstruct it which would have suggested that her  
17 efforts to reconstruct were wrong and you didn't show  
18 it to her. You waited until the end and then you  
19 played your instinct for the capital area trick of  
20 trying to pull it out of your pocket and suggesting  
21 all this was made up.

22 MR. CHERTOFF: Frankly, Mr. Fox, it never

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1 would have occurred to me that a witness would have  
2 come in with a prepared or a set version of what they  
3 wanted to say.

4 MR. FOX: Because she's very conscious of  
5 the fact that the last time she appeared in front of  
6 one of these charades, that some moron from Georgia  
7 got up and tried to impeach her with this stuff  
8 without showing her the previous document.

9 Now, we went through the only documents we  
10 had. She gave you her best faith effort at trying to  
11 figure out what had happened. She never told you  
12 this is the way it happened for sure. She told you  
13 that was her best recollection after recreating it.  
14 You knew there was a flaw in it or at least appears  
15 to be a flaw in it and didn't pull the thing out.  
16 It's not because you're trying to get to the bottom  
17 of this thing. It's because you're trying to play  
18 moronic little games.

19 MR. CHERTOFF: The record is going to  
20 reflect --

21 MR. FOX: The record is going to reflect  
22 that you are an unethical lawyer, sir, that you are

1 not trying to get to the bottom of this --

2 MR. CHERTOFF: The record is going to  
3 reflect, Mr. Fox, if you will calm yourself -- let me  
4 finish.

5 MR. FOX: No, let me finish.

6 MR. CHERTOFF: You have had plenty of  
7 opportunity for --

8 MR. FOX: You have been asking questions  
9 for which you have no basis. You know you're not  
10 supposed to do that. The rules apply here just like  
11 they do in court. You're not trying to get to the  
12 bottom of this. This woman has no partisan axe to  
13 grind. She's not a partisan in this one way or the  
14 other. You want to try to score points instead of  
15 trying to get to the bottom of this thing.

16 MR. CHERTOFF: It was your witness who  
17 chose rather than try to answer my questions in the  
18 order in which I put them, to try to -- to volunteer  
19 to lay out a chronology of activities. And I was  
20 frankly surprised that any lawyer would allow her to  
21 do it if there was any question of not having all the  
22 records. She, having made that choice with counsel,

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1 it was not up to me to interrupt and say wait a  
2 second, your version is incorrect.

3 MR. FOX: Because you and she are talking  
4 on two different pages. She's trying to find and  
5 remember what happened. You're trying to get a set  
6 of events from which you can make partisan points.  
7 There is a difference.

8 Now, you know, admittedly she shouldn't  
9 have probably come in here and assumed that you were  
10 operating in good faith. That's always a mistake,  
11 but she did. And you don't want to play it that  
12 way. If you want to play games, we will play games.

13 MR. CHERTOFF: Now the question that we  
14 have pending was --

15 THE WITNESS: Excuse me, sir. One very  
16 brief comment that I would make is that I do believe  
17 the record will show that when we began the  
18 discussion this morning which led to my production of  
19 these records, that you asked a question on the order  
20 of when was your next involvement with Madison.  
21 That's almost the identical question that I was asked  
22 in a House deposition in June.

1           During that deposition, I tried to give my  
2 best recollection. As I went through at some length,  
3 the consequence to me personally of doing that was to  
4 be surprised with records at a public hearing, so I  
5 tried this time to bring in those records so that we  
6 could go over the records that I have which I believe  
7 do support my essential testimony, which is that I  
8 had one conversation with Web Hubbell and that my  
9 first effort was to reach Donovan at the Rose Law  
10 Firm, and I believe that the phone records I have  
11 submitted show that the very first call I made was to  
12 Donovan.

13           So it's not a matter of me coming in at the  
14 opening of a deposition to make a presentation to  
15 you. It's me waiting to see if you asked about the  
16 time frame in which those records are relevant and me  
17 trying to provide a response that's more documented  
18 than I did before.

19           MR. KRAVITZ: May I state one thing for the  
20 record? I know it's not my turn, but I do think that  
21 Mr. Fox has a good point in one respect. You know,  
22 Mike, you're right that Ms. Breslaw did bring in

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1 documents and to some extent volunteer information  
2 and that in a more complete way than perhaps your  
3 question required her to provide for the committee,  
4 but I do think that Mr. Fox is correct that if we  
5 here as investigators for this committee are simply  
6 trying to find out the facts, that we ought not be  
7 holding back. Regardless of whether the witness has  
8 brought in documents or is simply trying to answer a  
9 question, we ought not be holding back documents in  
10 an effort simply to create impeachment material  
11 for -- either for the final report or for subsequent  
12 testimony that this witness may be asked to give at a  
13 public hearing.

14           I mean, it wasn't like you were just  
15 sitting there letting her answer the question. You  
16 were asking follow-up questions, really trying to  
17 lock her in, as any trial lawyer would do in a  
18 criminal prosecution or some other event, lock her  
19 into something that you knew was inconsistent with  
20 something you knew you had and you knew she didn't  
21 know you had, and I guess I question the  
22 appropriateness of it, and that's all.

1 MR. CHERTOFF: Neil, if I really wanted to  
2 hold back, I would have held back until the hearing.  
3 In fact, I let the witness --

4 MR. KRAVITZ: You knew that I would have  
5 brought it out in my questioning so you're obviously  
6 decided not to hold back completely.

7 MR. CHERTOFF: And we're coming up to it in  
8 the context we are here, where the witness in  
9 discussing the assignments that she had in going down  
10 to Kansas City as almost as an afterthought that  
11 there was something to do with Whitewater and  
12 suggests she only had a vague concept of that  
13 Whitewater involved the Clintons, and having  
14 volunteered that simply remarkable assertion, I am  
15 not going to simply be gentle and say well, what can  
16 I refresh your memory with, and having indicated on  
17 the record that she was not following the press in  
18 January, I'm going to explore, in fact the degree to  
19 which she was following the press.

20 MR. FOX: But see, you do that by  
21 misconstruing and misstating what she said.

22 MR. CHERTOFF: The record is going to be

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1 very clear.

2 THE WITNESS: It's going to show very  
3 clearly my description of the story, the one story  
4 that I read in detail, and the memo that I wrote  
5 about it.

6 MR. FOX: But you see what you say is you  
7 characterize what she says inaccurately. What she  
8 said was she couldn't recall precisely when the  
9 stories started to appear about the Clintons and  
10 Whitewater, that's all. She can't recall precisely  
11 when. She doesn't dispute you and she specifically  
12 said I don't dispute you that it was probably at that  
13 time. Fiske was probably appointed at that time.  
14 She doesn't recall precisely.

15 MR. CHERTOFF: It's a waste of time to  
16 argue about things the record will disclose.

17 MR. FOX: But it isn't a waste when you  
18 deliberately misconstrue the record in putting your  
19 follow-up questions.

20 MR. CHERTOFF: Mr. Fox, you know, I'm not  
21 going to respond to your accusations because I never  
22 do at a deposition because it's a waste of my time.



1 It's even a waste of the witness's time. I'm going  
2 to proceed.

3 BY MR. CHERTOFF:

4 Q Now, you indicated to us you first learned  
5 you were going to be involved in taking a second look  
6 at Madison the day before you went out to Kansas  
7 City?

8 A No.

9 Q When did you first learn you were going to  
10 get involved?

11 MR. FOX: Let's play the regular deposition  
12 game. Answer the questions literally from now on.  
13 Don't try to help him.

14 MR. CHERTOFF: That's a very good idea.

15 BY MR. CHERTOFF:

16 Q When did you first learn that you were  
17 going to be involved in taking another look at  
18 Madison?

19 A It was the fifth look. I had always been  
20 assigned to Madison as the civil professional  
21 liability attorney. It was logical, therefore, for  
22 Tom Hinds and Mark Gabrellian to turn to me to help

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1 with yet another look at Madison potential civil  
2 claims in January of 1994. I do not recall the exact  
3 date.

4 Q Now, at that point, did you believe that  
5 this additional look was going to be a waste of time?

6 A I do not recall.

7 Q And in fact, did you furnish to Mr. Hinds  
8 and other individuals at the RTC your summary and  
9 analysis of a New Yorker article published in or  
10 around January 17, 1994 regarding Whitewater?

11 A You obviously are reading from that  
12 document. Yes, I did.

13 Q So when you went down to Kansas City around  
14 the 1st of February 1994, you knew very well that one  
15 of your issues was going to be looking at the  
16 question of Whitewater; right?

17 MR. FOX: She told you that earlier.

18 THE WITNESS: As I have testified, I had a  
19 series of assignments which were given to me by  
20 Mr. Gabrellian sometime in January 1994. I do not  
21 recall specifically when any of those assignments  
22 were specifically given to me. When I went to Kansas

1 on February 2, 1994, I went with the intention of  
2 gathering information relevant to all of those  
3 assignments.

4 BY MR. CHERTOFF:

5 Q Now, how were you going to carry out these  
6 assignments? What were your specific plans?

7 A I had no particular plans when I got on the  
8 plane. I had the general sense that there were  
9 responsive documents in Kansas. When I arrived in  
10 Kansas, I found that the investigators had already  
11 assembled what they characterized were Madison  
12 documents in a conference room, and I spent most of  
13 the day going through those documents in that  
14 conference room.

15 Q And did you have any conversations with  
16 anybody?

17 A Gary Watts is a Washington, D.C.  
18 attorney -- excuse me, he is an attorney, but his job  
19 is investigator. He was stationed in that conference  
20 room and was also reviewing those same documents to  
21 satisfy his assignments in connection with this  
22 project. I'm sure that on and off through the course

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1 of the day I had a series of conversations with him.

2 Q Did you have a particular assignment as  
3 part of this trip to Kansas City in determining  
4 whether or not the Clintons and/or their interest in  
5 Whitewater could be excluded from consideration and  
6 any legal action taken under this extender of the  
7 statute of limitations?

8 MR. FOX: Do you understand that question?  
9 Because I don't.

10 MR. CHERTOFF: I'll have it read back.

11 MR. FOX: Why don't you just put it in  
12 English.

13 (The reporter read the record as requested.)

14 THE WITNESS: No.

15 BY MR. CHERTOFF:

16 Q At the time you went out to Kansas City --  
17 withdrawn.

18 During January 1994, were you concerned  
19 that the investigators in Kansas would also be  
20 looking at the decision to hire the Rose Law Firm?

21 A To the best of my recollection, I received  
22 a telephone call from an individual named Gary

1 Davidson sometime in January 1994. To the best of my  
2 recollection, Davidson began asking questions about  
3 the Rose Law Firm. To the best of my recollection,  
4 that phone call came in before the new project had  
5 been started so that it came in at a time when to my  
6 knowledge, there was no RTC investigation of Madison  
7 issues going on.

8 Iorio had submitted his report in December  
9 of '93. The criminal referrals had already been  
10 submitted to the Justice Department, so to the best  
11 of my recollection, the Davidson call came in at a  
12 time when there was no RTC investigation going on.  
13 At that time, to the best of my recollection, the  
14 only open investigation of Madison was the FDIC look  
15 at the Rose Law Firm.

16 Q What is the organization that has the  
17 initials OCOS?

18 A That -- I believe that that acronym is  
19 Office of Contractor Surveillance and something. I'm  
20 not exactly sure what the full initials are.

21 Q Is that part of the RTC?

22 A It's unclear to me whether that's a joint

1 FDIC/RTC entity.

2 Q Was there a point in time in January that  
3 you received some information that OCOS was getting  
4 information from the Kansas investigators about the  
5 hiring of the Rose Law Firm?

6 A I recall getting an inquiry from someone in  
7 OCOS. I believe it was in January of 1994, but I do  
8 not recall the exact date. I do not recall them  
9 particularly saying that the Kansas investigators had  
10 provided them with information, but I have the  
11 general sense that their inquiry had something to do  
12 with the Rose Law Firm.

13 Q Did you attempt to discourage the OCOS from  
14 opening up an investigation into the hiring of the  
15 firm?

16 A To the best of my recollection, I  
17 cooperated with the request from OCOS. I provided  
18 them with the information they had requested.

19 However, at that time I was aware that the  
20 FDIC, under the supervision of Jack Smith, was  
21 conducting a review of the decision to hire the Rose  
22 Law Firm. I also knew that the decision to hire the

1 Rose firm for the Frost accounting case had been made  
2 in the spring of '89 before the RTC was even created,  
3 and so therefore it was an FDIC decision and the FDIC  
4 had taken responsibility for looking into it.

5 In that context, although I do not have a  
6 clear recollection of my exact words, I believe that  
7 I may have tried to explain to the OCOS people that  
8 in my opinion, it was more appropriate for the FDIC  
9 to look into this than for them to look into it.  
10 That was my opinion. It continues to be my opinion,  
11 but I fully cooperated with them.

12 Q Did you suggest to OCOS or any of its  
13 personnel that they discontinue their inquiry?

14 A I don't recall ever doing that. I believe  
15 that I encouraged them to coordinate with the FDIC.

16 Q Did you ever send them an E-mail -- did you  
17 ever send an E-mail to anybody in the RTC indicating  
18 that the Kansas City investigators ought to  
19 discontinue their inquiry into the Rose Law Firm  
20 issue?

21 A I don't recall sending such an E-mail, but  
22 because the Kansas investigators are not trained in

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1 legal ethics and certainly as we have discussed at  
2 some length, the retention of the Rose Law Firm was  
3 done by me as an FDIC employee under FDIC rules in  
4 1989, I do not now consider it to be an appropriate  
5 area for the Kansas investigators to look at.

6 I do not have a clear recollection of  
7 sending anybody an E-mail, and again you're looking  
8 at a document there, so if I did send such an E-mail,  
9 I guess the best I can say is that to my knowledge,  
10 it's not part of their function to look at potential  
11 conflicts and I do not believe it's an appropriate  
12 area for them to look into.

13 Q When you were in Kansas City on or about  
14 February 1, 1994, did you have occasion to meet Jean  
15 Lewis?

16 A Yes.

17 Q How did that come about?

18 MR. FOX: Date was February 2.

19 BY MR. CHERTOFF:

20 Q How did that come about?

21 A Several times during the course of the day,  
22 Richard Iorio, Ms. Lewis's supervisor, encouraged me

1 to speak with Ms. Lewis. I resisted that for most of  
2 the day and spent most of the day in the conference  
3 room reviewing documents. At approximately 3:30 or  
4 4:00 in the afternoon, Mr. Iorio escorted me first to  
5 Ken Foust's office with whom he also suggested that I  
6 speak. Had a brief conversation with Foust.

7 During that time Iorio left. He then  
8 returned. He escorted me to Ms. Lewis's office. He  
9 again left, and my recollection is that Ms. Lewis was  
10 not in her office when I first got there. She  
11 returned and then we proceeded to have a  
12 conversation.

13 Q Was it your intent during this visit in  
14 Kansas City to seek her out and talk to her?

15 A No.

16 Q Did you meet with her in order to see if  
17 she could shed some light on the issue of whether  
18 Whitewater had been responsible for any of the losses  
19 at Madison Guaranty?

20 A I met with her at Iorio's suggestion. She  
21 worked on, to my understanding, all of the criminal  
22 referrals that pertain to Madison. To the best of my

1 recollection, Whitewater is involved in at least some  
2 of those referrals, but other transactions are also  
3 involved.

4 So to the best of my recollection, it  
5 seemed to me at the time that if she had factual  
6 knowledge about any of the issues or projects that I  
7 was working on, that I would be interested in hearing  
8 them.

9 Q Did you say to her in this meeting that  
10 Jack Ryan -- in substance, that Jack Ryan and Ellen  
11 Kulka would be happy to see no losses due to  
12 Whitewater on the Madison Guaranty institution?

13 A I have no recollection of making that  
14 statement, but as you know, that's been widely  
15 disseminated through the press and so I am aware that  
16 Jean Lewis secretly recorded me saying that. I have  
17 no recollection of saying it.

18 Q I'm not going to go through the tape bit by  
19 bit because I know you've heard it.

20 A No, I have not.

21 Q You've never heard the tape?

22 A I've heard portions of it when I testified



1 before the grand jury. I have never heard the whole  
2 thing.

3 Q The portions that you've heard, did you  
4 recognize your voice?

5 A I had real questions about whether it was  
6 my voice.

7 Q Was there anybody else in your group that  
8 went to Kansas City with the name April?

9 A Not that I know.

10 Q Was there anybody else from your group,  
11 from the RTC in Kansas City, who were concerning  
12 themselves with Maple Creek Farms?

13 A Gabrellian was handing out the assignments,  
14 so I do not know what assignments everyone else had.  
15 I certainly did have some responsibility for  
16 analyzing the Maple Creek Farms transactions, but I  
17 am not aware of whether Gabrellian asked anybody else  
18 to do anything else with that family of transactions.

19 Q And another area of your responsibility was  
20 whether there was any loss of Madison relative to  
21 Whitewater; correct?

22 A Correct.

1 Q Did you understand at the time that you  
2 were there on February 2 that there was impending a  
3 deadline under the statute of limitations for  
4 determining whether Whitewater would become a subject  
5 of a legal or included within a legal case involving  
6 losses to Madison?

7 A At that time I understood that there was --  
8 that the statute of limitations which had been  
9 extended pursuant to the RTC Completion Act had been  
10 extended in a five-year increment measured from the  
11 time the institution failed. I believe Madison  
12 failed February 28, 1989. Adding five years to that  
13 date, one would get February 28, 1994, so that  
14 deadline would have applied to any civil claim or  
15 civil fraud claim that we would have considered  
16 bringing. It would not have applied uniquely to  
17 Whitewater issues but instead to any claim against  
18 anyone for those kinds of torts.

19 Q In your mind, did you have a sense that if  
20 there was no loss to Madison from Whitewater, that it  
21 would get the RTC off the hook, so to speak?

22 A I don't remember thinking that.

1 Q Do you remember thinking that it was  
2 important as a first priority to establish that  
3 neither President nor Mrs. Clinton had any liability  
4 for any losses sustained by Madison?

5 A I don't remember thinking that; however, it  
6 has been my experience that our investigators will  
7 sometimes submit criminal referrals which describe  
8 real wrongdoing. However, the wrongdoing involved  
9 does not cause a loss.

10 An easy example is if you have a bank  
11 officer who is -- who has maybe negligently made a  
12 loan, not in a criminal fashion, but then the  
13 borrower doesn't repay it and the officer begins to  
14 cover it up by falsifying the records, it may very  
15 well be a crime to falsify records and that may  
16 justify criminal prosecution, but that activity does  
17 not usually cause a loss.

18 From our perspective, from the RTC's  
19 perspective in the civil context, you cannot file  
20 suit against somebody unless you can prove damages.  
21 I suppose there is some -- there are some declaratory  
22 actions, but those are not the kinds of actions that

1 would be pursued in the context of a tort case, a  
2 negligence case, a fraud case.

3 So although I do not have a clear, specific  
4 recollection of what I was thinking at that time, I  
5 have had the experience on various occasions where  
6 matters that are appropriately the subject of  
7 criminal referrals are not appropriate for civil  
8 litigation because the activity involved did not  
9 cause a loss.

10 Q Did you have a discussion with Jean Lewis  
11 in Kansas City on February 2 about how likely it is  
12 that the Clintons would have realized that their  
13 carrying costs on Whitewater were being paid by  
14 somebody else?

15 A I don't have a recollection from that  
16 conversation, but it seems to me that in the course  
17 of the House hearing, House Banking Committee hearing  
18 in August of 1995, that that issue was raised.

19 Q Was it raised between you and Ms. Lewis in  
20 February of 1994?

21 A I don't recall.

22 Q Would you agree that it's a fair point that

1 if someone has a business investment in property and  
2 you're not putting any money in, where the money is  
3 coming from that's making real estate payments?  
4 Would you agree that's a fair point?

5 A I'm sorry?

6 (The reporter read the record as requested.)

7 BY MR. CHERTOFF:

8 Q Would you agree with me that it's a fair  
9 point that if you have a real estate investment and  
10 you're not getting any income for the investment, you  
11 have to wonder where the money is coming from that's  
12 making your payments under your real estate expenses?

13 A As a general matter, yes.

14 Q You mentioned earlier a conversation with  
15 Mr. Gary Davidson. Did you ever tell Mr. Davidson in  
16 January 1994 that RTC people in management positions  
17 would take a dim view of him investigating Madison  
18 Guaranty?

19 A No.

20 Q Did you ever tell him that -- Mr. Davidson  
21 ought to be careful of who he talks to and what he  
22 says because of people associated with Madison

1 Guaranty?

2 A I don't recall saying that, no.

3 Q Is it something you think you might have  
4 said?

5 A I'm sorry?

6 Q Is it something that you think you might  
7 have said?

8 A My recollection of the conversation with  
9 Davidson was that it focused on Rose Law Firm  
10 conflicts issues. To the best of my recollection, we  
11 discussed the fact that the FDIC, as supervised by  
12 Jack Smith, was conducting an inquiry at that time on  
13 Rose Law Firm conflicts issues, and although I do not  
14 have a specific recollection of what I said to  
15 Davidson, it seems possible to me that I conveyed to  
16 him that the FDIC, in fact, a very senior person at  
17 the FDIC had taken responsibility for that project  
18 and that it would probably not be appropriate for  
19 Gary Davidson, a nonattorney, a person who had no  
20 training, to my knowledge, in legal ethics or the  
21 model rules of professional liability -- excuse me,  
22 model rules of professional responsibility, for

1 Mr. Davidson to conduct some sort of inquiry  
2 regarding the Rose Law Firm.

3 Q Is that all you said to him?

4 A To the best of my recollection, yes.

5 Q Were you involved in the production of  
6 documents to the Senate Banking Committee regarding  
7 the issue of contacts between Treasury and RTC and  
8 the White House?

9 A I was not involved in the sense that I did  
10 not handle that production, but my general  
11 recollection is that both the Senate and the House  
12 have at different times made document requests to the  
13 RTC. And I believe I am one of the people who has  
14 been canvassed by the people who are producing  
15 documents.

16 Q Putting aside documents in your own files  
17 and in your own custody and control that you've  
18 produced in response to Congressional requests, have  
19 you sought to become involved in productions made by  
20 other people?

21 A I would not characterize anything I've done  
22 as becoming involved.

1 Q Did you ask to speak to senior members of  
2 the RTC about what they were going to produce in  
3 response to requests for documents by the Senate or  
4 the House of Representatives?

5 A It seems to me that at some point in maybe  
6 the summer of 1994, after I had had a series of very  
7 unpleasant experiences with the press, that -- it  
8 seems to me that I had previously been shown an  
9 E-mail of mine which I don't even remember who it's  
10 to, but the gist of it is if you're going to produce  
11 information that pertains to the conversation with  
12 Jean Lewis, please at least let me know because I  
13 don't want to -- frankly, particularly on the House  
14 side, I don't trust them to keep things confidential,  
15 and so I became concerned that something would be  
16 used to attack me in the press again.

17 Q What you were concerned about was getting a  
18 copy of anything that was produced?

19 A Being made aware of what was being  
20 produced. I don't remember my exact words.

21 Q Did you suggest that things not be  
22 confused?

1 MR. FOX: Things that were called for?

2 MR. CHERTOFF: Yes.

3 MR. FOX: As opposed to not producing  
4 things that weren't called for?

5 BY MR. CHERTOFF:

6 Q Well, I'm asking you, did you suggest that  
7 people who were going through documents to respond to  
8 Congressional requests for documents consult with you  
9 before they produced any documents that bore on the  
10 issue of your conversation with Jean Lewis?

11 A I don't remember my exact words, but I  
12 believe I did ask to be informed because of the very  
13 bad experience I had had with the press in the  
14 spring.

15 Q I'm going to read you an E-mail, which I  
16 will show you after I read it, to Mark Gabrellian  
17 from yourself dated Tuesday, June 28, 1994.

18 "I have the impression that we're in the  
19 midst of producing docs to the Senate Banking  
20 Committee in anticipation of the hearing scheduled  
21 for the end of July. If anybody is considering  
22 producing anything that has anything to do with my

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1 conversation with Jean Lewis, I would like to talk  
2 about whether it's responsive to the committee's  
3 request. It's my understanding that the Senate  
4 rejected amendments which might have brought this  
5 incident into the scope of the hearings. At a  
6 personal level, I strongly request that everybody be  
7 careful not to inadvertently produce anything to do  
8 with the Lewis conversation. Such production could  
9 very well throw me into another situation in which  
10 I'm blind-sided by crazy members of Congress who are  
11 playing to the press. If that happens I am not going  
12 to let myself get slammed. I will start telling my  
13 side of the story to the press and the chips will  
14 just have to fall where they may."

15 Now, you remember sending that E-mail?

16 A I have a general recollection of it.

17 Q And when you requested that people not  
18 inadvertently produce anything to do with the Lewis  
19 conversation, what did you mean by that?

20 A Well, I did not know what documents the RTC  
21 itself had or RTC management had at that time. To  
22 the best of my recollection, that time frame was



1 during a period in which an allegation had been made  
2 that Lewis had secretly recorded the conversation and  
3 there were press reports that suggested that, but to  
4 the best of my recollection, I did not know for sure  
5 at that time whether the conversation had actually  
6 been recorded or not. I did not then and I do not  
7 now have a clear recollection of everything that was  
8 said in that conversation.

9 As a result, I wanted to let people know, I  
10 think, as best as I can recall, that if they had  
11 gotten information that had anything to do with the  
12 conversation, if Lewis had for example produced a  
13 tape to them, that I would like to be informed of  
14 it.

15 I think there is a reference in the E-mail  
16 to responsiveness. I believe at that time that the  
17 hearings in the summer of 1994 were of very limited  
18 scope, so as a lawyer, it is legitimate to provide  
19 information that is responsive but not necessarily  
20 provide additional information that is not responsive  
21 to a particular request.

22 Q Did you want to get involved in the

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1 decisionmaking process by the RTC about what they  
2 were going to deem responsive or not responsive?

3 A Well, I'm a staff attorney. The chances of  
4 my being permitted to participate in the  
5 decisionmaking process is pretty slim; however, at a  
6 personal level, as I said in there, I had had a  
7 dreadful experience with the press and I guess I was  
8 requesting that I at least be informed if they were  
9 going to produce material that might be relevant to  
10 what seemed to me to be the most controversial  
11 incident involving me.

12 Q But you specifically ask, did you not ask  
13 to get involved in a discussion with anybody who was  
14 considering producing anything having to do with the  
15 conversation with Jean Lewis, whether that production  
16 should be made as responsive or not; correct?

17 A The document says what it says.

18 Q Did you think it was appropriate for you as  
19 someone whose conduct was at least the subject of  
20 this focus to be involved in deciding which documents  
21 ought to be turned over?

22 MR. FOX: Appropriate under what standard?

1 BY MR. CHERTOFF:

2 Q Appropriate under your responsibilities as  
3 an RTC legal counsel.

4 A I can and will accept any judgment that my  
5 agency wants to make about me, but I do not accept a  
6 judgment made by the press or frankly by members of  
7 Congress about me. I do not -- after Congressman  
8 Leach went on the floor of the House of  
9 Representatives without contacting me previously and  
10 accused me on national television of being an  
11 unethical person, my respect, particularly for him  
12 and frankly for members of Congress, went down  
13 substantially. I did not trust them and frankly  
14 unfortunately I still do not trust them to conduct  
15 this kind of investigation as to me in a fair way.

16 So yes, I asked to do whatever the E-mail  
17 says. Now, I don't think that the RTC hierarchy made  
18 any effort to involve me in the process. I don't  
19 particularly recall getting any response to that  
20 E-mail, but I do think it's appropriate for a  
21 professional who faces criticism that can have a  
22 lifelong impact on her career to take steps to insure

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1 that people are not casually producing material to an  
2 entity like the House Banking Committee, which has  
3 shown itself to be willing to use it in a way that's  
4 defamatory.

5 Q Did anybody take you up on this request?

6 A No, not that I recall.

7 MR. CHERTOFF: Nothing further.

8 MR. KRAVITZ: Why don't we take a break. I  
9 don't think I have much.

10 (Recess.)

11 EXAMINATION

12 BY MR. KRAVITZ:

13 Q Back on the record.

14 Ms. Breslaw, I want to ask you some  
15 questions about an experience that you spoke about  
16 earlier involving problems that investigators in the  
17 Kansas City office of the RTC had completing work  
18 that they were working on involving the failure of  
19 the Midwest Savings and Loan in Minneapolis?

20 A Yes.

21 Q When did it first come to your attention  
22 that there was a problem with the Kansas City

1 investigators completing the work they were assigned  
2 to do?

3 A I don't remember the exact date, but it  
4 would have been during the spring of 1993.

5 Q And what was the work that the Kansas City  
6 investigators had been assigned to do that they did  
7 not complete on time?

8 A We had pending a lawsuit against former  
9 directors and officers of Midwest. I believe we also  
10 had sued an appraiser that had appraised property  
11 for -- actually for a borrower that was involved in  
12 that lawsuit. It was a fairly complicated lawsuit  
13 and the damages calculations were fairly  
14 complicated.

15 The court had imposed fairly strict  
16 discovery cutoffs. I don't remember the exact date,  
17 but we had to complete answers to interrogatories  
18 which included a very clear explanation of how we had  
19 calculated damages by a particular date. We had very  
20 aggressive opposing counsel, and the investigators  
21 simply failed to do the project.

22 Q Which investigators in the Kansas City

1 office were assigned to work on this project  
2 involving Midwest Savings and Loan?

3 A There was an individual named Duane  
4 Kepford. There was a group in the Kansas office  
5 which held itself out as sort of experts in real  
6 estate loan evaluation and particularly in damage  
7 calculation. That unit, I believe, was supervised by  
8 Michael Van Valkenberg, and there were various people  
9 working for him. Van Valkenberg, to my knowledge,  
10 reported to Iorio and as far as I know, still reports  
11 to Iorio.

12 Q Van Valkenberg is the second in command in  
13 the investigations office there on the civil side?

14 A I believe so.

15 Q Were any of the criminal investigators in  
16 the RTC's Kansas City field office assigned to work  
17 on the Midwest Savings and Loan case?

18 A In Midwest, we had -- or I should say the  
19 U.S. Attorney's office in Minnesota initiated and  
20 pursued criminal prosecutions in 1990. Those  
21 prosecutions led to convictions of various Midwest  
22 insiders.

1 While those prosecutions were ongoing, the  
2 Minnesota RTC investigators, including Mike Hemmerly,  
3 who we have mentioned before, provided assistance to  
4 the FBI and that U.S. Attorney's office, but those  
5 prosecutions had been completed before 1992 when the  
6 Minnesota RTC office closed and the remnant of the  
7 work, which is really our civil case, was transferred  
8 to Kansas.

9 So to the best of my knowledge, the Kansas  
10 criminal people never had anything to do with  
11 Midwest.

12 Q Did you have any conversations with  
13 Mr. Iorio as to why it was that investigators in the  
14 Kansas City office were not able to complete the  
15 assignments in the Midwest Savings and Loan case?

16 A I don't recall any, no.

17 Q Did you have any conversations with anyone  
18 else in the Kansas City field office in which you  
19 learned why it was that the investigators were unable  
20 to complete their assignments in the Midwest case?

21 A It seems to me that Duane Kepford was the  
22 one who explained to me that the job would not be

1 done. I do not recall any conversations with anyone  
2 else. As I testified earlier, I did raise concern  
3 about this to David Eisenstein, who was at the time  
4 my immediate supervisor in Washington. I'm not sure  
5 what David did to look into this.

6 Q What were the consequences to the RTC of  
7 the failure of the Kansas City investigators to  
8 complete their assignments on time?

9 A Well, in this case it required me to hire  
10 an outside consultant on an emergency basis to review  
11 these voluminous documents and other records and  
12 calculate damages. To the best of my recollection,  
13 he concluded that the damages were on the record of  
14 \$50 million, so it was a substantial case and we had  
15 to spend a substantial amount of money on this  
16 outside expert at the last minute to do the necessary  
17 work in order to meet the judge's deadline.

18 Q Is that an expert that would not otherwise  
19 have had to have been hired?

20 A Yes.

21 Q How much did you pay to hire the expert?

22 A I don't remember exactly, but it seems to

1 me it would have been about \$75,000.

2 Q You mentioned earlier that discovery  
3 sanctions were imposed as well?

4 A We avoided the sanctions, but that's what  
5 we were fearing.

6 Q Mr. Chertoff asked you some questions about  
7 whether on February 2, 1994 in Kansas City you asked  
8 Ms. Lewis or you told Ms. Lewis that Mr. Ryan and  
9 Ms. Kulka would be happy, or words to that effect,  
10 would be happy if they could say that Whitewater  
11 Development Corporation had caused no financial loss  
12 to Madison Guaranty Savings and Loan.

13 As of February 2, 1994, did you have any  
14 information that either Mr. Ryan or Ms. Kulka would  
15 be happy if he or she could say that Whitewater had  
16 caused no loss to Madison?

17 A No.

18 Q Had you spoken with Mr. Ryan as of February  
19 2, 1994 about any subject?

20 A No.

21 Q Had you even met Mr. Ryan as of February 2,  
22 1994?

1 A No.

2 Q Had anyone told you that Mr. Ryan wanted to  
3 be able to say that Whitewater had caused no loss to  
4 Madison?

5 A No.

6 Q Had you spoken with Ms. Kulka about that  
7 subject as of February 2, 1994?

8 A No.

9 Q Had you had any conversation with Ms. Kulka  
10 about Madison or its failure or about Whitewater as  
11 of February 2, 1994?

12 A I believe Ms. Kulka telephoned the  
13 professional liability suite of offices sometime in  
14 January 1994 asking for files that pertained to  
15 Madison. To the best of my recollection, her request  
16 for files had nothing to do with Whitewater, but she  
17 called relatively late in the evening, I happened to  
18 be there, I picked up the phone and we had a few  
19 sentences of conversation about her file request and  
20 I made arrangements for those files to be copied and  
21 sent to her, so that was the extent of my  
22 conversation with Ms. Kulka.



1 Q Before February 2, 1994?

2 A That's correct.

3 Q As of February 2, 1994, had anyone told you  
4 that Ms. Kulka would be happier if she could say or  
5 that wanted to say that Whitewater had caused no loss  
6 to Madison?

7 A No.

8 Q Had you spoken with Roger Altman about  
9 either Madison or Whitewater before February 2, 1994?

10 A I have never spoken with Roger Altman.

11 Q To this day, you've never spoken with Roger  
12 Altman?

13 A That's correct.

14 Q I want to ask you a few questions about the  
15 settlement that was reached in the Frost case. When  
16 was that case settled?

17 A In the spring of 1991.

18 Q In your opinion, was -- well, strike that.

19 Did you recommend to your superiors at the  
20 RTC that Frost's settlement offer be accepted?

21 A Yes.

22 Q Why did you make that recommendation to

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1 your superiors?

2 A It's been quite a while since I've looked  
3 at my recommendation memo.

4 Q Let me offer it to you if it might refresh  
5 your recollection. I'm going to show you a memo  
6 dated February 26, 1991 from you to Gerald Jacobs and  
7 William Roelle, Bates stamp numbered AB 0398 through  
8 AB 0404. Is that your recommendation memo?

9 A Yes.

10 Q Take as much time as you need and see if it  
11 refreshes your memory.

12 (Witness reviewed the document.)

13 A I have reread it.

14 Q I think the question was why did you  
15 recommend to your superiors at the RTC that they  
16 accept Frost's settlement offer?

17 A This memorandum generally explains the  
18 elements that we had to prove or would have had to  
19 prove if the case had gone to trial. It makes an  
20 attempt towards the end to do a form of litigation  
21 risk analysis to roughly gauge the settlement value  
22 of the case.

1           So the most simple answer is that based on  
2 our predictions about our chances of proving the  
3 various elements, measuring that against the  
4 potential recovery source, which was the auditors'  
5 insurance policy, the risk analysis predicted that  
6 the settlement value was \$1,050,000, and they were  
7 offering very close to that, 1,025,000.

8           So the simplest answer is based on my  
9 analysis of the case and employing this form of  
10 litigation risk analysis, the offer was justified.

11       Q   Was it also your position that going to  
12 trial would cost the RTC more money than the  
13 difference between what the offer was and what your  
14 risk analysis indicated was the amount that the case  
15 was worth?

16       A   Yes, that's true. The estimate of the  
17 trial costs would be according to this memo, would be  
18 likely to add about \$75,000 in legal fees and maybe  
19 \$10,000 in expert fees, so that would turn out to be  
20 more than the \$25,000 different.

21       Q   Mr. Chertoff asked you this morning whether  
22 the case settled or how close to trial the case

1 settled. Is there anything on the first page of that  
2 memo that refreshes your memory as to the answer to  
3 that question?

4       A   Yes. In fact, this memo states that the  
5 matter was scheduled for trial on March 25, 1991.  
6 The memo is dated February 26, 1991.

7       Q   When did the case actually settle?

8       A   Well, this memo seems to have been -- I was  
9 looking for the date on which the memo was approved,  
10 and I can't find a date by the signatures, but I  
11 guess in my mind I would have had authority to tell  
12 the other side that we would accept their offer once  
13 the approvers had signed off on it, so I'm sure as  
14 soon as they did, I conveyed that to them and we  
15 would immediately have started the process of  
16 preparing settlement documents.

17       Q   So at most, the case settled two months  
18 before trial and quite likely it was less than two  
19 months before trial?

20       A   Well, the memo is dated February 26 and the  
21 trial schedule is March 25.

22       Q   At most, it was one month before trial?

- 1 A Correct.
- 2 Q And probably less than one month before
- 3 trial?
- 4 A Correct.
- 5 Q Is it fair to say then that the case
- 6 settled either at or near to the conclusion of the
- 7 discovery process?
- 8 A Yes.
- 9 Q This was not a case that settled right off
- 10 the bat?
- 11 A Correct.
- 12 Q Were you part -- did you participate in the
- 13 settlement negotiations between the RTC and Frost?
- 14 A Yes.
- 15 Q Were these settlement negotiations
- 16 negotiations that you would describe as being
- 17 arm's-length negotiations?
- 18 A Yes.
- 19 Q Do you have any concerns about whether
- 20 possibly undisclosed conflicts of interest by the
- 21 Rose Law Firm had any effect on the settlement that
- 22 was reached between the RTC and Frost & Company?
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- 1 A No, particularly because as this memo
- 2 explains, the source of the settlement proceeds was
- 3 the Crumm & Forster malpractice insurance policy, so
- 4 frankly, when we had settlement discussions, the most
- 5 active member of the other camp, if you will, was the
- 6 lawyer from Crumm & Forster.
- 7 And in the meaningful way, it was the RTC
- 8 negotiating with Crumm & Forster, the insurance
- 9 company, about how much insurance money they would
- 10 pay, not really the RTC negotiating with Frost
- 11 itself. I mean obviously they were a party to the
- 12 case, but the source of the money was the insurance
- 13 company.
- 14 Q Who made the final decision to accept
- 15 Frost's offer? Was it the Rose Law Firm or the RTC?
- 16 A The RTC.
- 17 MR. KRAVITZ: That's all I have. Thanks.
- 18 MR. CHERTOFF: Just a couple of things on
- 19 the issue of the Frost litigation.
- 20 EXAMINATION
- 21 BY MR. CHERTOFF:
- 22 Q When -- there was an individual by the name

1 of Paul Jeddelloh who brought to your attention his  
2 concern about the relationship between Mr. Ward and  
3 Mr. Hubbell; correct?

4 A Yes.

5 Q And was his concern about the conflict that  
6 the relationship would impair the Rose firm's  
7 representation of the FDIC in its litigation against  
8 Frost or that information obtained in the course of  
9 that litigation might be funneled to Mr. Ward for his  
10 case against the FDIC?

11 A I know that Paul Jeddelloh wrote me a letter  
12 in the spring of 1989 which discussed his concerns.  
13 Sitting here today, I can't remember exactly what  
14 Jeddelloh said, but since Jeddelloh would not have ever  
15 had responsibility for the accounting case, I think  
16 it's reasonable to infer that he had concerns that  
17 went beyond the accounting case.

18 Q Is it reasonable to infer that his concerns  
19 involved the litigation Mr. Ward had against the FDIC  
20 in other matters?

21 A I think so.

22 Q I'm sorry, against Madison in other

1 matters?

2 A I think so.

3 Q When you spoke to Mr. Hubbell about his  
4 relationship with Mr. Ward, what commitments did he  
5 make to you in terms of avoiding even the appearance  
6 of a conflict?

7 A My recollection of that conversation is  
8 that Hubbell told me that he did not represent Ward  
9 in the ongoing litigation against Madison and that he  
10 would not represent Ward in the future. That was my  
11 impression from the conversation.

12 To the best of my recollection, I told him  
13 to confirm what he had said to me in a letter, and to  
14 the best of my recollection, he did that by sending a  
15 letter to me and to David Paulson, I believe, who was  
16 the managing agent, the senior business person at the  
17 Madison conservatorship at that time.

18 Q Did he indicate he wouldn't speak to  
19 Mr. Ward about any information that he obtained or  
20 learned about in the course of his representation of  
21 Madison?

22 A I don't remember him specifically saying

1 that.

2 Q Did you raise that issue with him?

3 A I don't remember.

4 Q Did he ever tell you that he was from time  
5 to time in contact with the attorney who was  
6 representing Mr. Ward in his litigation with the FDIC  
7 because he would learn about developments from the  
8 lawyer and pass them on to Mr. Ward?

9 A I don't remember him saying that, no.

10 Q Is that the kind of consideration that  
11 would have affected your judgment about whether to  
12 keep him on?

13 A Well, one has to assume that an attorney  
14 will behave in an ethical way unless one has evidence  
15 to the contrary. As we have discussed at some  
16 length, Little Rock, particularly Little Rock's legal  
17 community is very small. To the best of my  
18 recollection, the firm that was representing Ward was  
19 Wright, Lindsey & Jennings, so Wright, Lindsey &  
20 Jennings continued to do work for the RTC.

21 And I suppose if one had a conspiratorial  
22 turn of mind, one might fret that the lawyers within

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1 Wright, Lindsey who were working for the RTC on other  
2 matters might have conversations with the lawyers at  
3 Wright, Lindsey who were representing Ward against  
4 the RTC in connection with Madison.

5 Q In fact, there's a mechanism to deal with  
6 that problem, isn't there, it's called a Chinese wall  
7 or an ethics wall; correct?

8 A That exists, yes.

9 Q Did you ask for Mr. Hubbell to create an  
10 ethics wall or Chinese wall between himself and  
11 Mr. Ward?

12 A No.

13 Q Did you know that -- withdrawn.

14 Did Mr. Hubbell tell you that the Rose Law  
15 Firm represented the Little Rock airport commission?

16 A I don't remember him telling me that, no.

17 Q Did he tell you that Mr. Ward sat on the  
18 airport commission?

19 A No, I don't remember us ever having a  
20 conversation about the airport, or the airport  
21 commission.

22 Q Was it one of the considerations in your



1 keeping the Frost case at the Rose Law Firm the fact  
2 that Mr. Hubbell represented to you that Mr. Ward was  
3 not a client of the firm?

4 A That was one of my considerations for  
5 keeping the work at the Rose firm, yes.

6 Q If Mr. Ward had been a client of the firm,  
7 would you have taken the case away, the Frost case  
8 away from the Rose Law Firm?

9 A I believe that what I would have done would  
10 have been raise the issue with my supervisors. By  
11 that point, I believe we were in June of 1989, so by  
12 then the lawsuit was getting close to a year old,  
13 maybe not quite, so the balance would be could we  
14 take -- is the problem or potential problem serious  
15 enough that it warrants removing the case from the  
16 firm at that juncture in the lawsuit.

17 I believe that if I had understood in June  
18 of 1989 that Hubbell did represent Ward or Ward's  
19 interests, that I would have taken that up with  
20 supervisors. And I don't know what they would have  
21 advised me to do.

22 Q But you're confident that he did not

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1 mention a representation of the airport commission on  
2 which Mr. Ward was sitting as a commissioner?

3 A I don't remember him ever mentioning that,  
4 no.

5 MR. CHERTOFF: I have nothing further.

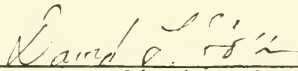
6 (Whereupon, at 5:03 p.m., the deposition  
7 was concluded.)  
8  
9

-----  
10 APRIL A. BRESLAW  
11  
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13  
14  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, David L. Hoffman, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires 6/30/00

## Sutherland, Asbill &amp; Brennan

TEL (202) 383-0100  
FAX (202) 637-3593

1275 PENNSYLVANIA AVENUE NW  
WASHINGTON DC 20004-2404

ATLANTA  
AUSTIN  
NEW YORK  
WASHINGTON

HAMILTON P. FOX, III

DIRECT LINE (202) 383-0666

July 11, 1996

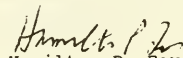
Robert J. Giuffra, Jr., Esq.  
Chief Counsel  
Committee on Banking, Housing, and  
Urban Affairs  
United States Senate  
Washington, D.C. 20510-6075

Dear Mr. Giuffra:

I am responding to your letter of June 27 that you sent to me concerning the testimony of my client, April A. Breslaw. Attached is an errata sheet and redactions of Ms. Breslaw's telephone numbers on pages 72, 73 and 150 of her deposition.

Exhibits AAB-1 and AAB-2 are telephone logs that contain personal telephone calls. Ms. Breslaw requests that they not be placed in the National Archives for public review. She recognizes that the logs reflect calls made to and from her telephone office, most of which could be classified as "business" rather than "personal." If you are unwilling to exclude the logs from the Archives, she would like the opportunity to redact the exhibits call by call in order to eliminate personal calls. This would require your sending us a copy of the exhibit for Ms. Breslaw to review.

Very truly yours,

  
Hamilton P. Fox, III

Enclosure

cc: April Breslaw

DEPONENT April Boeslow

## ERRATA

ERRATA  
(Telephone numbers + code deleted on p. 72)

[illegible]

Transcript of Hearings  
Before The  
United States Senate  
Committee on Banking, Housing and Urban Affairs  
In Re:  
Whitewater

Deposition of April A. Breslaw

Washington, D.C.

Monday, October 23, 1995

E R R A T A

| <u>Page</u> | <u>Line</u> | <u>Change From</u>        | <u>Change To</u>          | <u>Reason</u> |
|-------------|-------------|---------------------------|---------------------------|---------------|
| 37          | 4           | Guarantee                 | Guaranty                  | spelling      |
| 39          | 2           | that he                   | that if he                | missing word  |
| 41          | 7&8         | Joel                      | Jerry                     | name error    |
| 41          | 9           | general counsel           | General Counsel           | initial caps  |
| 41          | 14&22       | sitting                   | setting                   | error         |
| 45          | 13          | Guarantee                 | Guaranty                  | spelling      |
| 46          | 20          | "                         | "                         | "             |
| 47          | 14          | and is                    | that is                   | error         |
| 52          | 15          | Tom Heinz                 | Tom Hindes                | spelling      |
| 53          | 1&3         | " "                       | " "                       | "             |
| 53          | 11          | POS                       | PLS                       | error         |
| 58          | 13          | Ioria                     | Iorio                     | spelling      |
| 59          | 2           | "                         | "                         | "             |
| 59          | 19-20       | deputy general<br>counsel | Deputy General<br>Counsel | initial caps  |
| 61          | 5           | Heinz                     | Hindes                    | spelling      |



## E R R A T A

| <u>Page</u> | <u>Line</u> | <u>Change From</u>                  | <u>Change To</u>                  | <u>Reason</u> |
|-------------|-------------|-------------------------------------|-----------------------------------|---------------|
| 67          | 7           | how                                 | who                               | error         |
| 67          | 18          | Guarantee                           | Guaranty                          | "             |
| 71          | 8           | I                                   | has                               | "             |
| 6           | 7           | counsel                             | Counsel                           | initial cap   |
| 7           | 4-5         | regional attorney                   | Regional Attorney                 | " "           |
| 8           | 5           | " "                                 | " "                               | " "           |
| 10          | 2           | counsel                             | Counsel                           | " "           |
| 10          | 9           | counsel                             | Counsel                           | " "           |
| 10          | 14          | John Beatty                         | John Beaty                        | spelling      |
| 10          | 16-17       | senior counsel                      | Senior Counsel                    | initial caps  |
| 11          | 17-18       | legal division                      | Legal Division                    | " "           |
| 11          | 21          | professional /<br>liability section | Professional<br>Liability Section | " "           |
| 11          | 22          | legal division                      | Legal Division                    | " "           |
| 12          | 22          | Tombach                             | Tomback                           | spelling      |
| 14          | 3           | "                                   | "                                 | "             |
| 14          | 6&8         | general counsel                     | General Counsel                   | initial caps  |
| 14          | 12          | Joe                                 | Jerry                             | name error    |
| 19          | 14          | the FDIC side                       | both the FDIC and<br>RTC sides    | error         |
| 22          | 2           | Guarantee                           | Guaranty                          | spelling      |
| 28          | 17          | "                                   | "                                 | "             |
| 36          | 21          | "                                   | "                                 | "             |

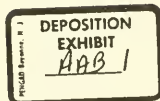
## E R R A T A

| <u>Page</u> | <u>Line</u> | <u>Change From</u>        | <u>Change To</u>          | <u>Reason</u> |
|-------------|-------------|---------------------------|---------------------------|---------------|
| 94          | 5           | ignored                   | annoyed                   | word error    |
| 105         | 19          | deputy general<br>counsel | Deputy General<br>Counsel | initial caps  |
| 115         | 6           | Rutger                    | Riker                     | spelling      |
| 121         | 19          | capital area              | capillaries               | word error    |
| 226         | 22          | confused                  | produced                  | error         |

05/04/95  
14:50:09

## Review Calls - New Report - SEP93

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| N0424571 | 3847833 | DAL    | WAS52153    | 09/01/93 | 14:29 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 49.7 | 1    | 4.42   |
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/01/93 | 16:05 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 1.1  | 1    | 0.10   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/01/93 | 16:06 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 0.4  | 1    | 0.04   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/01/93 | 17:41 | 6125551212    | 6125551212    | DIR ASST MN    | 0.6  | 2    | 0.64   |
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/07/93 | 11:09 | 2125966700    | 2125966700    | NEW YORK NY    | 2.3  | 1    | 0.21   |
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/09/93 | 14:08 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 0.7  | 1    | 0.07   |
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/10/93 | 15:12 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 1.8  | 1    | 0.17   |
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05/04/95  
14:50:17

## Review Calls - New Report - SEP93

| Acct No  | ID/AC   | Access | Called From | Date     | Time  | Number Dialed | Number Called | Place Called   | Mins  | Rate | Amount |
|----------|---------|--------|-------------|----------|-------|---------------|---------------|----------------|-------|------|--------|
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/14/93 | 15:33 | 2136838783    | 2136838783    | LOSANGELES CA  | 12.4  | 1    | 1.15   |
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| N0424571 | 3847833 | DAL    | WAS52153    | 09/15/93 | 14:17 | 2156506304    | 2156506304    | PLY FORGE PA   | 20.2  | 1    | 1.86   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/15/93 | 17:54 | 2136838711    | 2136838711    | LOSANGELES CA  | 9.2   | 2    | 0.86   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/16/93 | 14:44 | 2157512000    | 2157512000    | PHILA PA       | 0.8   | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/16/93 | 14:44 | 2155551212    | 2155551212    | DIA ASST PA    | 0.4   | 1    | 0.44   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/16/93 | 15:47 | 2156506304    | 2156506304    | PLY FORGE PA   | 41.5  | 1    | 3.66   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/16/93 | 15:51 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 37.7  | 1    | 3.51   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/16/93 | 18:15 | 3129843150    | 3129843150    | CHICAGO IL     | 1.4   | 2    | 0.13   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/17/93 | 10:57 | 2156506304    | 2156506304    | PLY FORGE PA   | 0.9   | 1    | 0.08   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/17/93 | 12:32 | 2156506304    | 2156506304    | PLY FORGE PA   | 0.7   | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 12:27 | 2157512205    | 2157512205    | PHILA PA       | 4.0   | 1    | 0.37   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 14:16 | 3124196900    | 3124196900    | CHICAGO IL     | 37.9  | 1    | 3.52   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 15:02 | 2156506149    | 2156506149    | PLY FORGE PA   | 0.6   | 1    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 15:10 | 2156506149    | 2156506149    | PLY FORGE PA   | 29.3  | 1    | 2.72   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 16:49 | 3129843100    | 3129843100    | CHICAGO IL     | 0.6   | 1    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 16:50 | 8063725050    | 8063725050    | AMARILLO TX    | 38.5  | 1    | 3.58   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 17:52 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 1.2   | 2    | 0.11   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/20/93 | 17:54 | 6196997658    | 6196997658    | SAN DIEGO CA   | 2.6   | 2    | 0.24   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 09:55 | 2136838711    | 2136838711    | LOSANGELES CA  | 2.2   | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 10:08 | 3122042800    | 3122042800    | CHICAGO IL     | 0.3   | 1    | 0.03   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 10:09 | 3122072800    | 3122072800    | CHICAGO IL     | 2.6   | 1    | 0.24   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 10:12 | 3122072800    | 3122072800    | CHICAGO IL     | 2.2   | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 13:47 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 1.6   | 1    | 0.15   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 14:47 | 3122072800    | 3122072800    | CHICAGO IL     | 2.6   | 1    | 0.24   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 15:31 | 4045817949    | 4045817949    | ATLANTA GA     | 9.0   | 1    | 0.84   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 16:08 | 2156506304    | 2156506304    | PLY FORGE PA   | 1.0   | 1    | 0.09   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 17:04 | 3129843100    | 3129843100    | CHICAGO IL     | 28.2  | 2    | 2.62   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/21/93 | 17:54 | 3032914696    | 3032914696    | DENVER CO      | 29.1  | 2    | 2.71   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/22/93 | 17:04 | 6196997658    | 6196997658    | SAN DIEGO CA   | 1.0   | 2    | 0.09   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/22/93 | 17:39 | 2136830652    | 2136830652    | LOSANGELES CA  | 0.4   | 2    | 0.04   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/22/93 | 17:40 | 2136830608    | 2136830608    | LOSANGELES CA  | 0.5   | 2    | 0.05   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/23/93 | 10:33 | 2136830608    | 2136830608    | LOSANGELES CA  | 2.1   | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/23/93 | 17:01 | 6022791600    | 6022791600    | PHOENIX AZ     | 3.0   | 2    | 0.28   |

05/04/95  
14:50:18

## Review Calls - New Report - SEP93

| Acct No  | ID/AC   | Access | Called From | Date     | Time  | Number Dialed | Number Called | Place Called  | Mins | Rate | Amount |
|----------|---------|--------|-------------|----------|-------|---------------|---------------|---------------|------|------|--------|
| N0424571 | 3847833 | DAL    | WASS2153    | 09/23/93 | 17:07 | 3032914653    | 3032914653    | DENVER CO     | 1.1  | 2    | 0.10   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/24/93 | 09:23 | 2108418240    | 2108418240    | SANANTONIO TX | 0.5  | 1    | 0.05   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/24/93 | 14:19 | 2136838783    | 2136838783    | LOSANGELES CA | 1.1  | 1    | 0.10   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/24/93 | 14:21 | 2136830600    | 2136830600    | LOSANGELES CA | 1.3  | 1    | 0.12   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/24/93 | 14:41 | 2015380800    | 2015380800    | MORRISTOWN NJ | 34.1 | 1    | 3.17   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/24/93 | 16:58 | 2108418240    | 2108418240    | SANANTONIO TX | 1.1  | 1    | 0.10   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/25/93 | 12:39 | 3129843100    | 3129843100    | CHICAGO IL    | 6.5  | 2    | 0.60   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/25/93 | 13:53 | 3129843100    | 3129843100    | CHICAGO IL    | 8.8  | 2    | 0.82   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/25/93 | 14:08 | 3129843100    | 3129843100    | CHICAGO IL    | 13.0 | 2    | 1.21   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/25/93 | 14:26 | 3129843150    | 3129843150    | CHICAGO IL    | 2.6  | 2    | 0.24   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/25/93 | 17:41 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.5  | 2    | 0.23   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/27/93 | 16:15 | 2015380800    | 2015380800    | MORRISTOWN NJ | 6.6  | 1    | 0.61   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 10:21 | 2136838783    | 2136838783    | LOSANGELES CA | 1.1  | 1    | 0.10   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 11:09 | 2015380800    | 2015380800    | MORRISTOWN NJ | 26.1 | 1    | 2.43   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 11:36 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.4  | 1    | 0.22   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 14:11 | 2136838783    | 2136838783    | LOSANGELES CA | 67.0 | 1    | 6.23   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 15:24 | 7142634659    | 7142634659    | IRVINE CA     | 15.2 | 1    | 1.41   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 15:48 | 2136830600    | 2136830600    | LOSANGELES CA | 1.9  | 1    | 0.18   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 18:15 | 5013770325    | 5013770325    | LITTLEROCK AR | 1.5  | 2    | 0.14   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 18:20 | 2015380800    | 2015380800    | MORRISTOWN NJ | 1.8  | 2    | 0.17   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 18:28 | 7142634406    | 7142634406    | IRVINE CA     | 3.2  | 2    | 0.30   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 18:52 | 7142634406    | 7142634406    | IRVINE CA     | 18.4 | 2    | 1.71   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 19:11 | 2136838783    | 2136838783    | LOSANGELES CA | 12.3 | 2    | 1.14   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/28/93 | 19:31 | 7148527770    | 7148527770    | IRVINE CA     | 8.3  | 2    | 0.77   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/29/93 | 11:36 | 2136838783    | 2136838783    | LOSANGELES CA | 12.9 | 1    | 1.20   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/29/93 | 11:37 | 7142634141    | 7142634141    | IRVINE CA     | 10.1 | 1    | 0.94   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/29/93 | 14:45 | 7142634579    | 7142634579    | IRVINE CA     | 0.5  | 1    | 0.05   |
| N0424571 | 3847833 | DAL    | WASS2153    | 09/29/93 | 15:48 | 2127041295    | 7041295       | NYTORK NY     | 2.0  | 1    | 0.13   |



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| Acct No  | ID/AC   | Access | Called From | Date     | Time  | Number Dialed | Number Called | Place Called  | Minutes | Rate | Amount |
|----------|---------|--------|-------------|----------|-------|---------------|---------------|---------------|---------|------|--------|
| N0424571 | 3847833 | DAL    | WAS52153    | 09/30/93 | 11:17 | 2015380800    | 2015380800    | MORRISTOWN NJ | 45.0    | 1    | 4.19   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/30/93 | 17:07 | 2136638783    | 2136638783    | LOSANGELES CA | 0.7     | 2    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/30/93 | 17:08 | 2136630600    | 2136630600    | LOSANGELES CA | 2.4     | 2    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/30/93 | 17:24 | 7142634659    | 7142634659    | IRVINE CA     | 3.1     | 2    | 0.29   |
| N0424571 | 3847833 | DAL    | WAS52153    | 09/30/93 | 17:27 | 2015380800    | 2015380800    | MORRISTOWN NJ | 1.1     | 2    | 0.10   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/01/93 | 10:36 | 9133448438    | 9133448438    | OVERLANDPK KS | 23.9    | 1    | 2.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/01/93 | 11:52 | 2015380800    | 2015380800    | MORRISTOWN NJ | 13.4    | 1    | 1.25   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/01/93 | 15:15 | 3129843100    | 3129843100    | CHICAGO IL    | 2.0     | 1    | 0.19   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/01/93 | 15:18 | 3129843100    | 3129843100    | CHICAGO IL    | 17.9    | 1    | 1.66   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/01/93 | 17:06 | 2015380800    | 2015380800    | MORRISTOWN NJ | 4.6     | 2    | 0.45   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 14:05 | 3129843100    | 3129843100    | CHICAGO IL    | 1.1     | 2    | 0.10   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 14:18 | 7084471201    | 7084471201    | RIVERSIDE IL  | 57.0    | 2    | 5.30   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 15:38 | 3129843150    | 3129843150    | CHICAGO IL    | 5.5     | 2    | 0.51   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 16:11 | 3122072800    | 3122072800    | CHICAGO IL    | 2.5     | 2    | 0.23   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 16:14 | 3122072767    | 3122072767    | CHICAGO IL    | 2.2     | 2    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/02/93 | 16:21 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.7     | 2    | 0.25   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 15:19 | 5013770325    | 5013770325    | LITTLEROCK AR | 12.6    | 1    | 1.17   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 15:38 | 9133448466    | 9133448466    | OVERLANDPK KS | 3.4     | 1    | 0.32   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 15:45 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.0     | 1    | 0.19   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 15:47 | 2108418240    | 2108418240    | SAWANTOWID TX | 0.7     | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 15:47 | 3122072767    | 3122072767    | CHICAGO IL    | 1.0     | 1    | 0.09   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/04/93 | 16:18 | 2157512000    | 2157512000    | PHILA PA      | 11.6    | 1    | 1.08   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/05/93 | 10:49 | 2015380800    | 2015380800    | MORRISTOWN NJ | 20.8    | 1    | 1.93   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/05/93 | 15:30 | 5013770346    | 5013770346    | LITTLEROCK AR | 0.3     | 1    | 0.03   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/05/93 | 15:30 | 5013770376    | 5013770376    | LITTLEROCK AR | 2.2     | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/06/93 | 16:52 | 3032914696    | 3032914696    | DENVER CO     | 2.4     | 1    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/06/93 | 18:05 | 3129843100    | 3129843100    | CHICAGO IL    | 4.0     | 2    | 0.37   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/06/93 | 18:10 | 4087762282    | 4087762282    | MORGANHILL CA | 0.3     | 2    | 0.03   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/06/93 | 18:10 | 4097762282    | 4097762282    | BRYAN TX      | 1.8     | 2    | 0.17   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:36 | 4155551212    | 4155551212    | DIR ASST CA   | 0.5     | 1    | 0.64   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:37 | 4154218232    | 4154218232    | SAW FRAN CA   | 0.8     | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:53 | 4097762282    | 4097762282    | BRYAN TX      | 49.0    | 1    | 4.56   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:55 | 2144435404    | 2144435404    | DALLAS TX     | 0.6     | 1    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:56 | 2144434869    | 2144434869    | DALLAS TX     | 0.4     | 1    | 0.04   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 10:57 | 2144432350    | 2144432350    | DALLAS TX     | 45.1    | 1    | 4.19   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 15:44 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.9     | 1    | 0.27   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 15:48 | 2015380800    | 2015380800    | MORRISTOWN NJ | 0.8     | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 15:49 | 2015380800    | 2015380800    | MORRISTOWN NJ | 9.9     | 1    | 0.92   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 16:22 | 8169687217    | 8169687217    | KANSASCITY MO | 14.0    | 1    | 1.30   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/07/93 | 16:37 | 2015380800    | 2015380800    | MORRISTOWN NJ | 10.8    | 1    | 1.00   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 09:57 | 5013770325    | 5013770325    | LITTLEROCK AR | 10.2    | 1    | 0.95   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 15:22 | 9133448219    | 9133448219    | OVERLANDPK KS | 0.3     | 1    | 0.03   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 15:23 | 9133448237    | 9133448237    | OVERLANDPK KS | 1.5     | 1    | 0.14   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 16:49 | 2015380800    | 2015380800    | MORRISTOWN NJ | 2.4     | 1    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 17:56 | 2015380800    | 2015380800    | MORRISTOWN NJ | 6.6     | 2    | 0.61   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/08/93 | 18:03 | 2015380800    | 2015380800    | MORRISTOWN NJ | 1.4     | 2    | 0.13   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/12/93 | 16:05 | 2015380800    | 2015380800    | MORRISTOWN NJ | 0.9     | 1    | 0.08   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/12/93 | 16:36 | 2157512686    | 2157512686    | PHILA PA      | 0.7     | 1    | 0.07   |

## Review Calls - New Report - OCT93

| Acct No  | IO/AC   | Access | Called From | Date     | Time  | Number Dialed | Number Called | Place Called   | Mins | Rate | Amount |
|----------|---------|--------|-------------|----------|-------|---------------|---------------|----------------|------|------|--------|
| N0424571 | 3847833 | DAL    | WAS52153    | 10/13/93 | 17:04 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 0.6  | 2    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/13/93 | 17:05 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 2.4  | 2    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/13/93 | 18:24 | 5013770325    | 5013770325    | LITTLE ROCK AR | 1.0  | 2    | 0.09   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/14/93 | 12:12 | 5013770325    | 5013770325    | LITTLE ROCK AR | 27.5 | 1    | 2.56   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/14/93 | 13:47 | 3129843100    | 3129843100    | CHICAGO IL     | 3.5  | 1    | 0.33   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/14/93 | 13:52 | 3122072780    | 3122072780    | CHICAGO IL     | 0.5  | 1    | 0.05   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/15/93 | 11:11 | 2144435404    | 2144435404    | DALLAS TX      | 3.1  | 1    | 0.29   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/15/93 | 11:15 | 2144437973    | 2144437973    | DALLAS TX      | 17.3 | 1    | 1.61   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/15/93 | 14:36 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 0.6  | 1    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 11:36 | 3129843100    | 3129843100    | CHICAGO IL     | 8.5  | 1    | 0.79   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 11:48 | 8063725050    | 8063725050    | AMARILLO TX    | 3.5  | 1    | 0.33   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 12:03 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 12.4 | 1    | 1.15   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 12:18 | 4015551515    | 4015551515    | DIR ASST RI    | 0.3  | 1    | 0.64   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 12:19 | 4015551212    | 4015551212    | DIR ASST RI    | 0.3  | 1    | 0.64   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/18/93 | 15:51 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 13.4 | 1    | 1.25   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/19/93 | 12:00 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 28.2 | 1    | 2.62   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/19/93 | 17:26 | 4154218232    | 4154218232    | SAN FRAN CA    | 3.7  | 2    | 0.34   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/20/93 | 16:17 | 4159782600    | 4159782600    | SAN FRAN CA    | 19.5 | 1    | 1.81   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/20/93 | 16:38 | 7148524202    | 7148524202    | IRVINE CA      | 12.6 | 1    | 1.17   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/20/93 | 18:56 | 3122072780    | 3122072780    | CHICAGO IL     | 1.4  | 2    | 0.13   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/21/93 | 14:39 | 7148524202    | 7148524202    | IRVINE CA      | 39.9 | 1    | 3.71   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/21/93 | 16:50 | 3129843100    | 3129843100    | CHICAGO IL     | 12.8 | 1    | 1.19   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/21/93 | 17:04 | 2135551212    | 2135551212    | DIR ASST CA    | 0.5  | 2    | 0.64   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/21/93 | 17:05 | 2136261717    | 2136261717    | LOSANGELES CA  | 2.6  | 2    | 0.24   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/21/93 | 17:20 | 4154218232    | 4154218232    | SAN FRAN CA    | 2.7  | 2    | 0.25   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/22/93 | 16:20 | 2156313878    | 2156313878    | MORRISTOWN PA  | 10.6 | 1    | 0.99   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/22/93 | 16:32 | 4154218232    | 4154218232    | SAN FRAN CA    | 0.8  | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/24/93 | 16:27 | 3122072770    | 3122072770    | CHICAGO IL     | 12.0 | 2    | 1.12   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 09:19 | 3122072767    | 3122072767    | CHICAGO IL     | 0.6  | 1    | 0.06   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 09:20 | 3122072780    | 3122072780    | CHICAGO IL     | 1.7  | 1    | 0.16   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 11:09 | 3122072767    | 3122072767    | CHICAGO IL     | 35.4 | 1    | 3.29   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 11:45 | 9133448438    | 9133448438    | OVERLANDPK KS  | 42.1 | 1    | 3.92   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 14:59 | 3032998900    | 3032998900    | DENVER CO      | 1.2  | 1    | 0.11   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 15:00 | 3032998900    | 3032998900    | DENVER CO      | 5.8  | 1    | 0.54   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 15:28 | 3032914690    | 3032914690    | DENVER CO      | 2.1  | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 15:44 | 3129843100    | 3129843100    | CHICAGO IL     | 28.6 | 1    | 2.66   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 16:21 | 3129843100    | 3129843100    | CHICAGO IL     | 10.4 | 1    | 0.97   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 16:32 | 5045254400    | 5045254400    | NEWORLEANS LA  | 1.8  | 1    | 0.17   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/25/93 | 17:06 | 3129843100    | 3129843100    | CHICAGO IL     | 2.2  | 2    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 13:59 | 2136838783    | 2136838783    | LOSANGELES CA  | 33.5 | 1    | 3.12   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 15:26 | 4159782600    | 4159782600    | SAN FRAN CA    | 2.9  | 1    | 0.27   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 16:25 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 4.5  | 1    | 0.42   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 16:30 | 2136261717    | 2136261717    | LOSANGELES CA  | 1.9  | 1    | 0.18   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 16:38 | 2122598000    | 2122598000    | NEW YORK NY    | 17.8 | 1    | 1.66   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/26/93 | 17:05 | 2136261717    | 2136261717    | LOSANGELES CA  | 1.1  | 2    | 0.10   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/27/93 | 09:26 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 8.8  | 1    | 0.82   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/27/93 | 13:42 | 2156313801    | 2156313801    | MORRISTOWN PA  | 26.1 | 1    | 2.43   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/27/93 | 17:43 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 2.5  | 2    | 0.23   |

05/04/95  
13:26:34

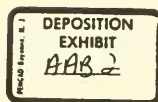
Review Calls - New Report - OCT93

| Acct No  | ID/AC   | Access | Called From | Date     | Time  | Number Dialed | Number Called | Place Called   | Mins | Rate | Amount |
|----------|---------|--------|-------------|----------|-------|---------------|---------------|----------------|------|------|--------|
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 10:47 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 2.1  | 1    | 0.20   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 12:06 | 9185829201    | 9185829201    | TULSA OK       | 1.4  | 1    | 0.13   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 12:14 | 9185868383    | 9185868383    | TULSA OK       | 1.5  | 1    | 0.14   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 13:20 | 9087412525    | 9087412525    | RED BANK NJ    | 0.5  | 1    | 0.05   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 14:35 | 2136838783    | 2136838783    | LOSANGELES CA  | 22.9 | 1    | 2.13   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 15:50 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 2.4  | 1    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 15:59 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 0.3  | 1    | 0.03   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 15:59 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 0.7  | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 16:02 | 2015380800    | 2015380800    | MORRISTOWN NJ  | 22.6 | 1    | 2.10   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 16:44 | 9087412525    | 9087412525    | RED BANK NJ    | 12.4 | 1    | 1.15   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 16:59 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 1.7  | 1    | 0.16   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/28/93 | 17:22 | 2136261717    | 2136261717    | LOSANGELES CA  | 2.9  | 2    | 0.27   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 09:14 | 2015381984    | 2015381984    | MORRISTOWN NJ  | 1.5  | 1    | 0.14   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 10:05 | 9185829201    | 9185829201    | TULSA OK       | 1.0  | 1    | 0.09   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 10:17 | 9185829201    | 9185829201    | TULSA OK       | 0.8  | 1    | 0.07   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 10:22 | 9185829201    | 9185829201    | TULSA OK       | 15.6 | 1    | 1.45   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 10:39 | 6172487000    | 6172487000    | BOSTON MA      | 1.7  | 1    | 0.16   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 13:43 | 9133448635    | 9133448635    | OVERLANDPK KS  | 24.8 | 1    | 2.31   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 14:08 | 2136261717    | 2136261717    | LOSANGELES CA  | 2.4  | 1    | 0.22   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 14:17 | 2136838783    | 2136838783    | LOSANGELES CA  | 3.3  | 1    | 0.31   |
| N0424571 | 3847833 | DAL    | WAS52153    | 10/29/93 | 16:59 | 6123303014    | 6123303014    | MINNEAPOLIS MN | 2.4  | 1    | 0.22   |

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All Calls Made by Date

| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/15/93    | 6:01 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.4            |
| 60316            | 10/15/93    | 5:04 PM     | BRESLAW, APRIL | 7035339323    | 0          | FALLSCHRCH  | VA          | 25.7           |
| 60316            | 10/15/93    | 5:01 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.7            |
| 60316            | 10/15/93    | 4:58 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.9            |
| 60316            | 10/15/93    | 4:52 PM     | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 1.0            |
| 60316            | 10/15/93    | 4:50 PM     | BRESLAW, APRIL | 6252940       |            | WASHINGTON  | DC          | 0.4            |
| 60316            | 10/15/93    | 4:49 PM     | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 0.4            |
| 60316            | 10/15/93    | 4:49 PM     | BRESLAW, APRIL | 6255294       |            | WASHINGTON  | DC          | 0.1            |
| 60316            | 10/15/93    | 4:48 PM     | BRESLAW, APRIL | 7035339323    |            | FALLSCHRCH  | VA          | 0.9            |
| 60316            | 10/15/93    | 4:39 PM     | BRESLAW, APRIL | 83812         |            | 550 17TH    |             | 0.8            |
| 60316            | 10/15/93    | 4:18 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.6            |
| 60316            | 10/15/93    | 3:40 PM     | BRESLAW, APRIL | 87400         |            | 550 17TH    |             | 0.3            |
| 60316            | 10/15/93    | 3:36 PM     | BRESLAW, APRIL | 7036849064    |            | ALEXANDRIA  | VA          | 1.7            |
| 60316            | 10/15/93    | 3:23 PM     | BRESLAW, APRIL | 67332         |            | DCS NETWK   |             | 11.5           |
| 60316            | 10/15/93    | 3:07 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.2            |
| 60316            | 10/15/93    | 3:02 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.3            |
| 60316            | 10/15/93    | 2:38 PM     | BRESLAW, APRIL |               | 0          |             |             | 1.5            |
| 60316            | 10/15/93    | 2:35 PM     | BRESLAW, APRIL | 6123303014    |            | MINEAPOLIS  | MN          | 0.7            |
| 60316            | 10/15/93    | 2:24 PM     | BRESLAW, APRIL | 67332         |            | DCS NETWK   |             | 7.2            |
| 60316            | 10/15/93    | 1:37 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.5            |
| 60316            | 10/15/93    | 12:33 PM    | BRESLAW, APRIL |               | 0          |             |             | 0.7            |
| 60316            | 10/15/93    | 12:00 PM    | BRESLAW, APRIL | 4167566       |            | WASHINGTON  | DC          | 1.3            |
| 60316            | 10/15/93    | 11:54 AM    | BRESLAW, APRIL |               | 0          |             |             | 0.3            |
| 60316            | 10/15/93    | 11:46 AM    | BRESLAW, APRIL |               | 0          |             |             | 5.2            |
| 60316            | 10/15/93    | 11:28 AM    | BRESLAW, APRIL |               | 0          |             |             | 0.2            |
| 60316            | 10/15/93    | 11:14 AM    | BRESLAW, APRIL | 2144437973    |            | DALLAS      | TX          | 17.5           |
| 60316            | 10/15/93    | 11:10 AM    | BRESLAW, APRIL | 2144435404    |            | DALLAS      | TX          | 3.4            |
| 60316            | 10/15/93    | 10:52 AM    | BRESLAW, APRIL | 83706         |            | 550 17TH    |             | 1.1            |
| 60316            | 10/15/93    | 10:21 AM    | BRESLAW, APRIL |               | 0          |             |             | 0.8            |
| 60316            | 10/15/93    | 9:26 AM     | BRESLAW, APRIL | 8008593342    |            | TOLL FREE   |             | 8.8            |
| 60316            | 10/14/93    | 10:52 PM    | BRESLAW, APRIL |               | 0          |             |             | 0.0            |
| 60316            | 10/14/93    | 6:01 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.1            |
| 60316            | 10/14/93    | 5:25 PM     | BRESLAW, APRIL |               | 0          |             |             | 2.3            |
| 60316            | 10/14/93    | 4:47 PM     | BRESLAW, APRIL |               | 0          |             |             | 1.2            |
| 60316            | 10/14/93    | 4:37 PM     | BRESLAW, APRIL |               | 0          |             |             | 20.7           |
| 60316            | 10/14/93    | 4:23 PM     | BRESLAW, APRIL | 83706         |            | 550 17TH    |             | 7.5            |
| 60316            | 10/14/93    | 3:41 PM     | BRESLAW, APRIL |               | 0          |             |             | 1.4            |
| 60316            | 10/14/93    | 2:17 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.7            |
| 60316            | 10/14/93    | 2:02 PM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 5.3            |
| 60316            | 10/14/93    | 1:59 PM     | BRESLAW, APRIL |               | 0          |             |             | 0.2            |



All Calls Made by Date

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| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/14/93    | 1:51 PM     | BRESLAW, APRIL | 3122072780    |            | CHICAGO     | IL          | 0.6            |
| 60316            | 10/14/93    | 1:46 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 3.4            |
| 60316            | 10/14/93    | 1:11 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 10/14/93    | 12:23 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 10/14/93    | 12:11 PM    | BRESLAW, APRIL | 5013770325    |            | LITTLEROCK  | AR          | 27.4           |
| 60316            | 10/14/93    | 11:13 AM    | BRESLAW, APRIL | 83706         |            | 550 17TH    |             | 0.6            |
| 60316            | 10/14/93    | 10:16 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 1.0            |
| 60316            | 10/14/93    | 9:50 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/14/93    | 9:39 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/14/93    | 9:37 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 10/14/93    | 9:10 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.3            |
| 60316            | 10/14/93    | 9:07 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/14/93    | 8:43 AM     | BRESLAW, APRIL | 7033543277    |            | FALLSCHRCH  | VA          | 0.8            |
| 60316            | 10/13/93    | 6:27 PM     | BRESLAW, APRIL | 83623         |            | 550 17TH    |             | 2.4            |
| 60316            | 10/13/93    | 6:25 PM     | BRESLAW, APRIL | 3938400       |            | WASHINGTON  | DC          | 0.4            |
| 60316            | 10/13/93    | 6:24 PM     | BRESLAW, APRIL | 5013770325    |            | LITTLEROCK  | AR          | 0.9            |
| 60316            | 10/13/93    | 5:39 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 14.2           |
| 60316            | 10/13/93    | 5:23 PM     | BRESLAW, APRIL | 87400         |            | 550 17TH    |             | 1.3            |
| 60316            | 10/13/93    | 5:04 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2.5            |
| 60316            | 10/13/93    | 5:03 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 0.6            |
| 60316            | 10/13/93    | 3:55 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 17.8           |
| 60316            | 10/13/93    | 3:52 PM     | BRESLAW, APRIL | 83812         |            | 550 17TH    |             | 2.4            |
| 60316            | 10/13/93    | 3:51 PM     | BRESLAW, APRIL | 83706         |            | 550 17TH    |             | 0.4            |
| 60316            | 10/13/93    | 3:50 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 10/13/93    | 12:37 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/13/93    | 10:11 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.8            |
| 60316            | 10/13/93    | 10:05 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/13/93    | 9:19 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 10/12/93    | 6:07 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/12/93    | 4:53 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 25.9           |
| 60316            | 10/12/93    | 4:35 PM     | BRESLAW, APRIL | 2157512686    |            | PHILADELPH  | PA          | 0.8            |
| 60316            | 10/12/93    | 4:09 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/12/93    | 4:04 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1.2            |
| 60316            | 10/12/93    | 3:27 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/12/93    | 2:46 PM     | BRESLAW, APRIL | 7368250       |            | WASHINGTON  | DC          | 1.1            |
| 60316            | 10/12/93    | 2:41 PM     | BRESLAW, APRIL | 7368250       |            | WASHINGTON  | DC          | 0.8            |
| 60316            | 10/12/93    | 1:50 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 20.9           |
| 60316            | 10/12/93    | 11:51 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 17.7           |
| 60316            | 10/12/93    | 11:37 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 2.6            |
| 60316            | 10/12/93    | 11:12 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 12.0           |



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| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/12/93    | 11:09 AM    | BRESLAW, APRIL | 4838300       |            | WASHINGTON  | DC          | 0.7            |
| 60316            | 10/12/93    | 11:05 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.0            |
| 60316            | 10/12/93    | 10:41 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/12/93    | 10:25 AM    | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 29.7           |
| 60316            | 10/12/93    | 10:22 AM    | BRESLAW, APRIL | 6287000       |            | WASHINGTON  | DC          | 2.4            |
| 60316            | 10/12/93    | 10:20 AM    | BRESLAW, APRIL | 4838300       |            | WASHINGTON  | DC          | 2.5            |
| 60316            | 10/12/93    | 9:59 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/12/93    | 9:49 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 29.3           |
| 60316            | 10/12/93    | 9:06 AM     | BRESLAW, APRIL | 8005426135    |            | TOLL FREE   |             | 0.3            |
| 60316            | 10/11/93    | 3:29 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.7            |
| 60316            | 10/11/93    | 1:15 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 10/10/93    | 3:38 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/10/93    | 3:37 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/08/93    | 6:06 PM     | BRESLAW, APRIL | 411           |            | DIR ASSIST  | DC          | 0.3            |
| 60316            | 10/08/93    | 6:05 PM     | BRESLAW, APRIL | 83812         |            | 550 17TH    |             | 0.5            |
| 60316            | 10/08/93    | 6:02 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1.4            |
| 60316            | 10/08/93    | 5:56 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 6.6            |
| 60316            | 10/08/93    | 5:41 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/08/93    | 4:50 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 6.8            |
| 60316            | 10/08/93    | 4:48 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2.4            |
| 60316            | 10/08/93    | 4:44 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.0            |
| 60316            | 10/08/93    | 4:37 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/08/93    | 4:36 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 10.9           |
| 60316            | 10/08/93    | 4:19 PM     | BRESLAW, APRIL | 2898660       |            | WASHINGTON  | DC          | 16.5           |
| 60316            | 10/08/93    | 4:13 PM     | BRESLAW, APRIL | 4838300       |            | WASHINGTON  | DC          | 5.3            |
| 60316            | 10/08/93    | 3:54 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 16.7           |
| 60316            | 10/08/93    | 3:27 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 10/08/93    | 3:26 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 6.7            |
| 60316            | 10/08/93    | 3:22 PM     | BRESLAW, APRIL | 9133448237    |            | MELROSE     | KS          | 1.8            |
| 60316            | 10/08/93    | 3:21 PM     | BRESLAW, APRIL | 9133448219    |            | MELROSE     | KS          | 0.6            |
| 60316            | 10/08/93    | 3:17 PM     | BRESLAW, APRIL | 83755         |            | 550 17TH    |             | 1.5            |
| 60316            | 10/08/93    | 3:05 PM     | BRESLAW, APRIL | 62117         |            | DCS NETWK   |             | 1.1            |
| 60316            | 10/08/93    | 2:58 PM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 6.1            |
| 60316            | 10/08/93    | 2:36 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.1            |
| 60316            | 10/08/93    | 2:23 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/08/93    | 2:11 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/08/93    | 2:10 PM     | BRESLAW, APRIL | 0             | 1          |             |             | .08            |
| 60316            | 10/08/93    | 1:26 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 2.2            |
| 60316            | 10/08/93    | 12:56 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 21.9           |
| 60316            | 10/08/93    | 12:20 PM    | BRESLAW, APRIL | 6287000       |            | WASHINGTON  | DC          | 5.6            |

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| Extension | Date     | Time     | Caller         | Called     | INC | CITY       | STAT | Minutes |
|-----------|----------|----------|----------------|------------|-----|------------|------|---------|
| 60316     | 10/08/93 | 12 07 PM | BRESLAW, APRIL | 9651025    |     | WASHINGTON | DC   | 0 1     |
| 60316     | 10/08/93 | 12 06 PM | BRESLAW, APRIL | 9624947    |     | WASHINGTON | DC   | 0 2     |
| 60316     | 10/08/93 | 11 50 AM | BRESLAW, APRIL | 0          | 1   |            |      | 14 9    |
| 60316     | 10/08/93 | 11 23 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0 5     |
| 60316     | 10/08/93 | 10 37 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0 3     |
| 60316     | 10/08/93 | 10 36 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0 6     |
| 60316     | 10/08/93 | 10 29 AM | BRESLAW, APRIL | 0          | 1   |            |      | 1 6     |
| 60316     | 10/08/93 | 9 55 AM  | BRESLAW, APRIL | 5013770325 |     | LITTLEROCK | AR   | 10 1    |
| 60316     | 10/08/93 | 9 22 AM  | BRESLAW, APRIL | 4167409    |     | WASHINGTON | DC   | 1 1     |
| 60316     | 10/07/93 | 6 35 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 8     |
| 60316     | 10/07/93 | 6 25 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 1     |
| 60316     | 10/07/93 | 4 37 PM  | BRESLAW, APRIL | 2015380800 |     | MORRISTOWN | NJ   | 10 7    |
| 60316     | 10/07/93 | 4 33 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 4     |
| 60316     | 10/07/93 | 4 22 PM  | BRESLAW, APRIL | 8169687217 |     | KANSASCITY | MO   | 13 9    |
| 60316     | 10/07/93 | 4 21 PM  | BRESLAW, APRIL | 8168524295 |     | MIAMI      | MO   | 0 0     |
| 60316     | 10/07/93 | 4 12 PM  | BRESLAW, APRIL | 9624947    |     | WASHINGTON | DC   | 2 4     |
| 60316     | 10/07/93 | 4 04 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 7 2     |
| 60316     | 10/07/93 | 3 48 PM  | BRESLAW, APRIL | 2015380800 |     | MORRISTOWN | NJ   | 10 0    |
| 60316     | 10/07/93 | 3 47 PM  | BRESLAW, APRIL | 2015380800 |     | MORRISTOWN | NJ   | 0 8     |
| 60316     | 10/07/93 | 3 43 PM  | BRESLAW, APRIL | 2015380800 |     | MORRISTOWN | NJ   | 2 9     |
| 60316     | 10/07/93 | 3 08 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 7     |
| 60316     | 10/07/93 | 3 00 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 8 9     |
| 60316     | 10/07/93 | 2 43 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 5     |
| 60316     | 10/07/93 | 1 56 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 9     |
| 60316     | 10/07/93 | 12 49 PM | BRESLAW, APRIL | 0          | 1   |            |      | 16 5    |
| 60316     | 10/07/93 | 12 33 PM | BRESLAW, APRIL | 0          | 1   |            |      | 5 1     |
| 60316     | 10/07/93 | 11 59 AM | BRESLAW, APRIL | 0          | 1   |            |      | 9 6     |
| 60316     | 10/07/93 | 11 56 AM | BRESLAW, APRIL | 7368250    |     | WASHINGTON | DC   | 0 3     |
| 60316     | 10/07/93 | 10 55 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0 3     |
| 60316     | 10/07/93 | 10 55 AM | BRESLAW, APRIL | 2144434869 |     | DALLAS     | TX   | 0 6     |
| 60316     | 10/07/93 | 10 54 AM | BRESLAW, APRIL | 2144435404 |     | DALLAS     | TX   | 0 9     |
| 60316     | 10/07/93 | 10 36 AM | BRESLAW, APRIL | 4154218232 |     | SANFRNCSCO | CA   | 0 8     |
| 60316     | 10/07/93 | 10 35 AM | BRESLAW, APRIL | 4155551212 |     | DIR ASSIST | CA   | 1 0     |
| 60316     | 10/07/93 | 10 27 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0 5     |
| 60316     | 10/06/93 | 7 04 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 0     |
| 60316     | 10/06/93 | 6 10 PM  | BRESLAW, APRIL | 4097762282 |     | BRYAN      | TX   | 1 7     |
| 60316     | 10/06/93 | 6 09 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0 0     |
| 60316     | 10/06/93 | 6 09 PM  | BRESLAW, APRIL | 4087762282 |     | MORGANHILL | CA   | 0 5     |
| 60316     | 10/06/93 | 6 04 PM  | BRESLAW, APRIL | 3129843100 |     | CHICAGO    | IL   | 4 7     |
| 60316     | 10/06/93 | 5 37 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 13 6    |

All Calls Made by Date

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| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/06/93    | 5:27 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 9.9            |
| 60316            | 10/06/93    | 4:58 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 18.4           |
| 60316            | 10/06/93    | 4:51 PM     | BRESLAW, APRIL | 3032914696    | 0          | DENVER      | CO          | 2.8            |
| 60316            | 10/06/93    | 4:37 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/06/93    | 3:55 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.8            |
| 60316            | 10/06/93    | 3:43 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 10/06/93    | 3:03 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 10/06/93    | 12:12 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 10/06/93    | 10:52 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/06/93    | 10:43 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 3.1            |
| 60316            | 10/06/93    | 10:25 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 12.8           |
| 60316            | 10/06/93    | 8:46 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/06/93    | 8:31 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.0            |
| 60316            | 10/06/93    | 8:24 AM     | BRESLAW, APRIL | 8630181       | 0          | WASHINGTON  | DC          | 1.0            |
| 60316            | 10/06/93    | 8:19 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/05/93    | 5:17 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/05/93    | 3:53 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 139.0          |
| 60316            | 10/05/93    | 3:32 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 4.5            |
| 60316            | 10/05/93    | 3:29 PM     | BRESLAW, APRIL | 5013770346    | 0          | LITTLEROCK  | AR          | 0.1            |
| 60316            | 10/05/93    | 3:29 PM     | BRESLAW, APRIL | 5013770376    | 0          | LITTLEROCK  | AR          | 2.2            |
| 60316            | 10/05/93    | 3:25 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/05/93    | 12:03 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/05/93    | 10:52 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 11.8           |
| 60316            | 10/05/93    | 10:49 AM    | BRESLAW, APRIL | 2015380800    | 0          | MORRISTOWN  | NJ          | 20.7           |
| 60316            | 10/05/93    | 10:35 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/05/93    | 9:47 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/05/93    | 9:31 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 6.3            |
| 60316            | 10/05/93    | 9:27 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 10/05/93    | 9:01 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/05/93    | 8:55 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 10/04/93    | 6:12 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 11.2           |
| 60316            | 10/04/93    | 6:02 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 10/04/93    | 5:50 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/04/93    | 5:40 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/04/93    | 5:35 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 17.5           |
| 60316            | 10/04/93    | 5:30 PM     | BRESLAW, APRIL | 67332         | 0          | DCS NETWK   |             | 0.0            |
| 60316            | 10/04/93    | 5:09 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/04/93    | 5:00 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 26.3           |
| 60316            | 10/04/93    | 4:31 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.6            |
| 60316            | 10/04/93    | 4:18 PM     | BRESLAW, APRIL | 2157512000    | 0          | PHILADELPH  | PA          | 11.7           |

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| <u>Extensinn</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/04/93    | 3 47 PM     | BRESLAW, APRIL | 4838300       |            | WASHINGTON  | DC          | 17.3           |
| 60316            | 10/04/93    | 3 46 PM     | BRESLAW, APRIL | 3122072767    |            | CHICAGO     | IL          | 0.0            |
| 60316            | 10/04/93    | 3 46 PM     | BRESLAW, APRIL | 3122072767    |            | CHICAGO     | IL          | 1.1            |
| 60316            | 10/04/93    | 3 45 PM     | BRESLAW, APRIL | 2108418240    |            | SANANTONIO  | TX          | 0.7            |
| 60316            | 10/04/93    | 3 43 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2.0            |
| 60316            | 10/04/93    | 3 41 PM     | BRESLAW, APRIL | 65723         |            | VA. SQUARE  |             | 0.5            |
| 60316            | 10/04/93    | 3 37 PM     | BRESLAW, APRIL | 9133448466    |            | MELROSE     | KS          | 3.5            |
| 60316            | 10/04/93    | 3 31 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 4.9            |
| 60316            | 10/04/93    | 3 18 PM     | BRESLAW, APRIL | 5013770325    |            | LITTLE ROCK | AR          | 12.7           |
| 60316            | 10/04/93    | 2 57 PM     | BRESLAW, APRIL | 67332         |            | DCS NETWK   |             | 11.9           |
| 60316            | 10/04/93    | 2 42 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 10/04/93    | 2 25 PM     | BRESLAW, APRIL | 67567         |            | DCS NETWK   |             | 1.1            |
| 60316            | 10/04/93    | 2 19 PM     | BRESLAW, APRIL | 67332         |            | DCS NETWK   |             | 0.6            |
| 60316            | 10/04/93    | 12 42 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 42.4           |
| 60316            | 10/04/93    | 12 16 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/04/93    | 10 48 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/04/93    | 10 06 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 10/04/93    | 9 55 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 10/04/93    | 8 55 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 10/02/93    | 4 20 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2.7            |
| 60316            | 10/02/93    | 4 13 PM     | BRESLAW, APRIL | 3122072767    |            | CHICAGO     | IL          | 2.5            |
| 60316            | 10/02/93    | 4 10 PM     | BRESLAW, APRIL | 3122072800    |            | CHICAGO     | IL          | 2.4            |
| 60316            | 10/02/93    | 2 17 PM     | BRESLAW, APRIL | 7084471201    |            | RVRSD CIC   | IL          | 57.2           |
| 60316            | 10/02/93    | 2 16 PM     | BRESLAW, APRIL | 83706         |            | 550 17TH    |             | 0.9            |
| 60316            | 10/02/93    | 2 04 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 1.2            |
| 60316            | 10/01/93    | 6 24 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 10/01/93    | 5 30 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.2            |
| 60316            | 10/01/93    | 5 05 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 4.9            |
| 60316            | 10/01/93    | 4 06 PM     | BRESLAW, APRIL | 67566         |            | DCS NETWK   |             | 31.9           |
| 60316            | 10/01/93    | 4 01 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 10/01/93    | 3 58 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.2            |
| 60316            | 10/01/93    | 3 17 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 18.1           |
| 60316            | 10/01/93    | 3 14 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 2.4            |
| 60316            | 10/01/93    | 2 50 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.8            |
| 60316            | 10/01/93    | 2 14 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.0            |
| 60316            | 10/01/93    | 12 49 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 5.6            |
| 60316            | 10/01/93    | 12 48 PM    | BRESLAW, APRIL | 5198619       |            | WASHINGTON  | DC          | 0.0            |
| 60316            | 10/01/93    | 12 48 PM    | BRESLAW, APRIL | 7035198619    |            | ALEXANDRIA  | VA          | 0.6            |
| 60316            | 10/01/93    | 12 42 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.8            |
| 60316            | 10/01/93    | 11 55 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |

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| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 10/01/93    | 11:53 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 8            |
| 60316            | 10/01/93    | 11:51 AM    | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 13 4           |
| 60316            | 10/01/93    | 11:33 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 18 8           |
| 60316            | 10/01/93    | 10:36 AM    | BRESLAW, APRIL | 9133448438    |            | MELROSE     | KS          | 23 9           |
| 60316            | 10/01/93    | 10:21 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 8            |
| 60316            | 10/01/93    | 10:06 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 0            |
| 60316            | 10/01/93    | 9:46 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 1 6            |
| 60316            | 09/30/93    | 6:43 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1 5            |
| 60316            | 09/30/93    | 6:41 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0 1            |
| 60316            | 09/30/93    | 5:26 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1 2            |
| 60316            | 09/30/93    | 5:23 PM     | BRESLAW, APRIL | 7142634659    |            | IRVINE      | CA          | 3 1            |
| 60316            | 09/30/93    | 5:09 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 9 1            |
| 60316            | 09/30/93    | 5:07 PM     | BRESLAW, APRIL | 2136830600    |            | LOSANGELES  | CA          | 2 4            |
| 60316            | 09/30/93    | 5:06 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 0 9            |
| 60316            | 09/30/93    | 4:08 PM     | BRESLAW, APRIL | 411           |            | DIR ASSIST  | DC          | 0 5            |
| 60316            | 09/30/93    | 4:08 PM     | BRESLAW, APRIL | 6364233       |            | WASHINGTON  | DC          | 1 4            |
| 60316            | 09/30/93    | 4:04 PM     | BRESLAW, APRIL | 9651025       |            | WASHINGTON  | DC          | 2 5            |
| 60316            | 09/30/93    | 2:13 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0 7            |
| 60316            | 09/30/93    | 12:06 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 3            |
| 60316            | 09/30/93    | 12:04 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 3 0            |
| 60316            | 09/30/93    | 11:58 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 2            |
| 60316            | 09/30/93    | 11:54 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 7            |
| 60316            | 09/30/93    | 11:51 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 2            |
| 60316            | 09/30/93    | 11:18 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0 3            |
| 60316            | 09/30/93    | 9:19 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 1 0            |
| 60316            | 09/30/93    | 7:16 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 1 1            |
| 60316            | 09/29/93    | 7:43 PM     | BRESLAW, APRIL | 9067395       |            | WASHINGTON  | DC          | 1 2            |
| 60316            | 09/29/93    | 7:10 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 12 3           |
| 60316            | 09/29/93    | 7:06 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0 2            |
| 60316            | 09/29/93    | 6:51 PM     | BRESLAW, APRIL | 7142634406    |            | IRVINE      | CA          | 18 3           |
| 60316            | 09/29/93    | 6:27 PM     | BRESLAW, APRIL | 7142634406    |            | IRVINE      | CA          | 3 1            |
| 60316            | 09/29/93    | 6:21 PM     | BRESLAW, APRIL | 7142634275    |            | IRVINE      | CA          | 0 3            |
| 60316            | 09/29/93    | 6:20 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1 7            |
| 60316            | 09/29/93    | 6:17 PM     | BRESLAW, APRIL | 5142000       |            | WASHINGTON  | DC          | 1 0            |
| 60316            | 09/29/93    | 6:16 PM     | BRESLAW, APRIL | 411           |            | DIR ASSIST  | DC          | 0 7            |
| 60316            | 09/29/93    | 6:14 PM     | BRESLAW, APRIL | 5013770325    |            | LITTLEROCK  | AR          | 1 9            |
| 60316            | 09/29/93    | 6:09 PM     | BRESLAW, APRIL | 7368250       |            | WASHINGTON  | DC          | 2 2            |
| 60316            | 09/29/93    | 6:09 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 4 5            |
| 60316            | 09/29/93    | 5:36 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0 8            |
| 60316            | 09/29/93    | 5:06 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 2 0            |



All Calls Made by Date

5/4/95 10 47 AM

| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/29/93    | 4 43 PM     | BRESLAW, APRIL |               | 0          | I           |             | 1 8            |
| 60316            | 09/29/93    | 4 35 PM     | BRESLAW, APRIL |               | 0          | I           |             | 26 9           |
| 60316            | 09/29/93    | 4 20 PM     | BRESLAW, APRIL | 67332         |            | DCS NETWK   |             | 1 3            |
| 60316            | 09/29/93    | 4 11 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 3            |
| 60316            | 09/29/93    | 4 11 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 5            |
| 60316            | 09/29/93    | 3 59 PM     | BRESLAW, APRIL |               | 0          | I           |             | 31 7           |
| 60316            | 09/29/93    | 3 58 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 6            |
| 60316            | 09/29/93    | 3 52 PM     | BRESLAW, APRIL |               | 0          | I           |             | 6 0            |
| 60316            | 09/29/93    | 3 47 PM     | BRESLAW, APRIL | 2136830600    |            | LOSANGELES  | CA          | 1 9            |
| 60316            | 09/29/93    | 3 47 PM     | BRESLAW, APRIL | 2127041295    |            | NEWYORKCTY  | NY          | 2 2            |
| 60316            | 09/29/93    | 3 43 PM     | BRESLAW, APRIL | 86792         |            | 550 17TH    |             | 3 6            |
| 60316            | 09/29/93    | 3 23 PM     | BRESLAW, APRIL | 7142634659    |            | IRVINE      | CA          | 15 2           |
| 60316            | 09/29/93    | 3 07 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 1            |
| 60316            | 09/29/93    | 3 00 PM     | BRESLAW, APRIL |               | 0          | I           |             | 20 3           |
| 60316            | 09/29/93    | 2 45 PM     | BRESLAW, APRIL | 7142634579    |            | IRVINE      | CA          | 0 8            |
| 60316            | 09/29/93    | 2 32 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 4            |
| 60316            | 09/29/93    | 2 19 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0 1            |
| 60316            | 09/29/93    | 2 10 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 67 1           |
| 60316            | 09/29/93    | 1 58 PM     | BRESLAW, APRIL |               | 0          | I           |             | 1 0            |
| 60316            | 09/29/93    | 12 26 PM    | BRESLAW, APRIL |               | 0          | I           |             | 11 7           |
| 60316            | 09/29/93    | 12 26 PM    | BRESLAW, APRIL |               | 0          | I           |             | 0 8            |
| 60316            | 09/29/93    | 12 23 PM    | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 1 1            |
| 60316            | 09/29/93    | 12 00 PM    | BRESLAW, APRIL |               | 0          | I           |             | 0 1            |
| 60316            | 09/29/93    | 11 59 AM    | BRESLAW, APRIL |               | 0          | I           |             | 23 1           |
| 60316            | 09/29/93    | 11 37 AM    | BRESLAW, APRIL | 9066565       |            | WASHINGTON  | DC          | 23 0           |
| 60316            | 09/29/93    | 11 36 AM    | BRESLAW, APRIL | 9066565       |            | WASHINGTON  | DC          | 0 0            |
| 60316            | 09/29/93    | 11 35 AM    | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2 4            |
| 60316            | 09/29/93    | 11 34 AM    | BRESLAW, APRIL |               | 0          | I           |             | 1 7            |
| 60316            | 09/29/93    | 11 09 AM    | BRESLAW, APRIL |               | 0          | I           |             | 4 7            |
| 60316            | 09/29/93    | 11 08 AM    | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 26 1           |
| 60316            | 09/29/93    | 11 00 AM    | BRESLAW, APRIL | 2898660       |            | WASHINGTON  | DC          | 0 7            |
| 60316            | 09/29/93    | 10 57 AM    | BRESLAW, APRIL | 5149500       |            | WASHINGTON  | DC          | 0 3            |
| 60316            | 09/29/93    | 10 47 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0 5            |
| 60316            | 09/29/93    | 10 20 AM    | BRESLAW, APRIL |               | 0          | I           |             | 12 5           |
| 60316            | 09/29/93    | 10 19 AM    | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 1 3            |
| 60316            | 09/29/93    | 10 09 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0 1            |
| 60316            | 09/29/93    | 10 05 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0 9            |
| 60316            | 09/29/93    | 9 58 AM     | BRESLAW, APRIL |               | 0          | I           |             | 20 9           |
| 60316            | 09/29/93    | 9 49 AM     | BRESLAW, APRIL |               | 0          | I           |             | 5 1            |
| 60316            | 09/29/93    | 9 22 AM     | BRESLAW, APRIL |               | 0          | I           |             | 26 0           |

All Calls Made by Date

5/4/93 10 47 AM

| <u>Extension</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/29/93    | 9:14 AM     | BRESLAW, APRIL | 4167409       |            | WASHINGTON  | DC          | 0.9            |
| 60316            | 09/28/93    | 8:29 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.0            |
| 60316            | 09/28/93    | 5:13 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 09/28/93    | 4:52 PM     | BRESLAW, APRIL | 7361623       |            | WASHINGTON  | DC          | 7.2            |
| 60316            | 09/28/93    | 4:45 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.1            |
| 60316            | 09/28/93    | 4:43 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.7            |
| 60316            | 09/28/93    | 4:42 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 8.8            |
| 60316            | 09/28/93    | 4:14 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 6.6            |
| 60316            | 09/28/93    | 4:00 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.5            |
| 60316            | 09/28/93    | 2:38 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.0            |
| 60316            | 09/28/93    | 2:32 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 62.9           |
| 60316            | 09/28/93    | 2:15 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.8            |
| 60316            | 09/28/93    | 1:43 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 31.2           |
| 60316            | 09/28/93    | 1:37 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 4.6            |
| 60316            | 09/28/93    | 1:31 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 09/28/93    | 1:11 PM     | BRESLAW, APRIL | 88541         |            | 550 17TH    |             | 16.4           |
| 60316            | 09/28/93    | 12:13 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 09/28/93    | 11:17 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 3.5            |
| 60316            | 09/28/93    | 11:14 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 09/28/93    | 11:05 AM    | BRESLAW, APRIL | 9066134       |            | WASHINGTON  | DC          | 1.5            |
| 60316            | 09/28/93    | 10:58 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 1.5            |
| 60316            | 09/28/93    | 10:46 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 09/28/93    | 9:20 AM     | BRESLAW, APRIL | 2898660       |            | WASHINGTON  | DC          | 1.3            |
| 60316            | 09/28/93    | 8:08 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 09/27/93    | 6:30 PM     | BRESLAW, APRIL | 7035258429    |            | ALEXANDRIA  | VA          | 0.1            |
| 60316            | 09/27/93    | 5:40 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 2.5            |
| 60316            | 09/27/93    | 5:20 PM     | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 1.1            |
| 60316            | 09/27/93    | 4:57 PM     | BRESLAW, APRIL | 2108418240    |            | SANANTONIO  | TX          | 1.0            |
| 60316            | 09/27/93    | 3:34 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 4.8            |
| 60316            | 09/27/93    | 3:25 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 09/27/93    | 3:22 PM     | BRESLAW, APRIL | 4167409       |            | WASHINGTON  | DC          | 0.4            |
| 60316            | 09/27/93    | 3:05 PM     | BRESLAW, APRIL | 9066134       |            | WASHINGTON  | DC          | 2.0            |
| 60316            | 09/27/93    | 2:40 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 34.1           |
| 60316            | 09/27/93    | 2:22 PM     | BRESLAW, APRIL | 67576         |            | DCS NETWK   |             | 17.4           |
| 60316            | 09/27/93    | 2:20 PM     | BRESLAW, APRIL | 2136830600    |            | LOSANGELES  | CA          | 1.4            |
| 60316            | 09/27/93    | 2:19 PM     | BRESLAW, APRIL | 2136830800    |            | LOSANGELES  | CA          | 0.1            |
| 60316            | 09/27/93    | 2:18 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 1.3            |
| 60316            | 09/27/93    | 2:08 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 13.0           |
| 60316            | 09/27/93    | 2:02 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 09/27/93    | 1:54 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 3.0            |

All Calls Made by Date

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| Extension | Date     | Time     | Caller         | Called     | INC | CITY       | STAT | Minutes |
|-----------|----------|----------|----------------|------------|-----|------------|------|---------|
| 60316     | 09/27/93 | 1:53 PM  | BRESLAW, APRIL | 3129843100 |     | CHICAGO    | IL   | 8.8     |
| 60316     | 09/27/93 | 1:47 PM  | BRESLAW, APRIL | 7368250    |     | WASHINGTON | DC   | 0.4     |
| 60316     | 09/27/93 | 1:44 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.1     |
| 60316     | 09/27/93 | 1:41 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.4     |
| 60316     | 09/27/93 | 1:15 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.4     |
| 60316     | 09/27/93 | 12:38 PM | BRESLAW, APRIL | 3129843100 |     | CHICAGO    | IL   | 6.5     |
| 60316     | 09/27/93 | 12:32 PM | BRESLAW, APRIL | 0          | 1   |            |      | 27.2    |
| 60316     | 09/27/93 | 11:47 AM | BRESLAW, APRIL | 67577      |     | DCS NETWK  |      | 7.0     |
| 60316     | 09/27/93 | 11:44 AM | BRESLAW, APRIL | 7361623    |     | WASHINGTON | DC   | 1.7     |
| 60316     | 09/27/93 | 11:36 AM | BRESLAW, APRIL | 0          | 1   |            |      | 7.5     |
| 60316     | 09/27/93 | 11:01 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0.7     |
| 60316     | 09/27/93 | 10:16 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0.2     |
| 60316     | 09/27/93 | 10:13 AM | BRESLAW, APRIL | 0          | 1   |            |      | 0.1     |
| 60316     | 09/27/93 | 9:55 AM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.4     |
| 60316     | 09/27/93 | 9:22 AM  | BRESLAW, APRIL | 2108418240 |     | SANANTONIO | TX   | 0.4     |
| 60316     | 09/27/93 | 8:26 AM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.7     |
| 60316     | 09/24/93 | 6:01 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.6     |
| 60316     | 09/24/93 | 5:55 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.2     |
| 60316     | 09/24/93 | 5:26 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.8     |
| 60316     | 09/24/93 | 5:06 PM  | BRESLAW, APRIL | 3032914653 |     | DENVER     | CO   | 1.7     |
| 60316     | 09/24/93 | 5:01 PM  | BRESLAW, APRIL | 6022791600 |     | PHOENIX    | AZ   | 3.0     |
| 60316     | 09/24/93 | 3:58 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 0.0     |
| 60316     | 09/23/93 | 6:56 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 1.4     |
| 60316     | 09/23/93 | 5:42 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 10.3    |
| 60316     | 09/23/93 | 5:40 PM  | BRESLAW, APRIL | 7368250    |     | WASHINGTON | DC   | 2.2     |
| 60316     | 09/23/93 | 5:39 PM  | BRESLAW, APRIL | 2136830608 |     | LOSANGELES | CA   | 0.5     |
| 60316     | 09/23/93 | 5:38 PM  | BRESLAW, APRIL | 2136830652 |     | LOSANGELES | CA   | 0.7     |
| 60316     | 09/23/93 | 5:10 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 10.1    |
| 60316     | 09/23/93 | 5:02 PM  | BRESLAW, APRIL | 6196997658 |     | SAN DIEGO  | CA   | 1.2     |
| 60316     | 09/23/93 | 4:24 PM  | BRESLAW, APRIL | 0          | 1   |            |      | 2.5     |
| 60316     | 09/23/93 | 4:11 PM  | BRESLAW, APRIL | 6364233    |     | WASHINGTON | DC   | 3.2     |
| 60316     | 09/23/93 | 4:10 PM  | BRESLAW, APRIL | 411        |     | DIR ASSIST | DC   | 0.4     |
| 60316     | 09/23/93 | 3:53 PM  | BRESLAW, APRIL | 3013366200 |     | CAPITOLHGT | MD   | 1.3     |
| 60316     | 09/23/93 | 3:52 PM  | BRESLAW, APRIL | 6364225    |     | WASHINGTON | DC   | 0.5     |
| 60316     | 09/23/93 | 3:51 PM  | BRESLAW, APRIL | 6364225    |     | WASHINGTON | DC   | 0.4     |
| 60316     | 09/23/93 | 3:49 PM  | BRESLAW, APRIL | 7036429270 |     | FALLSCHRCH | VA   | 2.4     |
| 60316     | 09/23/93 | 3:48 PM  | BRESLAW, APRIL | 411        |     | DIR ASSIST | DC   | 0.9     |
| 60316     | 09/23/93 | 2:55 PM  | BRESLAW, APRIL | 8226340    |     | WASHINGTON | DC   | 1.2     |
| 60316     | 09/23/93 | 2:43 PM  | BRESLAW, APRIL | 7033543277 |     | FALLSCHRCH | VA   | 4.7     |
| 60316     | 09/23/93 | 2:40 PM  | BRESLAW, APRIL | 83812      |     | 550 17TH   |      | 1.3     |

All Calls Made by Date

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| <u>Extensinn</u> | <u>Date</u> | <u>Time</u> | <u>Caller</u>  | <u>Called</u> | <u>INC</u> | <u>CITY</u> | <u>STAT</u> | <u>Minutes</u> |
|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/23/93    | 2:36 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.7            |
| 60316            | 09/23/93    | 2:02 PM     | BRESLAW, APRIL |               | 0          | I           |             | 2.0            |
| 60316            | 09/23/93    | 1:24 PM     | BRESLAW, APRIL |               | 0          | I           |             | 1.2            |
| 60316            | 09/23/93    | 1:13 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.6            |
| 60316            | 09/23/93    | 12:32 PM    | BRESLAW, APRIL |               | 0          | I           |             | 23.4           |
| 60316            | 09/23/93    | 12:27 PM    | BRESLAW, APRIL |               | 0          | I           |             | 1.1            |
| 60316            | 09/23/93    | 12:26 PM    | BRESLAW, APRIL |               | 0          | I           |             | 0.1            |
| 60316            | 09/23/93    | 11:58 AM    | BRESLAW, APRIL |               | 0          | I           |             | 9.3            |
| 60316            | 09/23/93    | 10:57 AM    | BRESLAW, APRIL | 7368250       |            | WASHINGTON  | DC          | 7.4            |
| 60316            | 09/23/93    | 10:50 AM    | BRESLAW, APRIL |               | 0          | I           |             | 4.0            |
| 60316            | 09/23/93    | 10:42 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0.4            |
| 60316            | 09/23/93    | 10:34 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0.8            |
| 60316            | 09/23/93    | 10:32 AM    | BRESLAW, APRIL | 2136830608    |            | LOSANGELES  | CA          | 2.4            |
| 60316            | 09/23/93    | 10:31 AM    | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 16.4           |
| 60316            | 09/23/93    | 10:02 AM    | BRESLAW, APRIL |               | 0          | I           |             | 1.3            |
| 60316            | 09/23/93    | 9:26 AM     | BRESLAW, APRIL |               | 0          | I           |             | 0.1            |
| 60316            | 09/22/93    | 10:10 PM    | BRESLAW, APRIL |               | 0          | I           |             | 2.3            |
| 60316            | 09/22/93    | 5:53 PM     | BRESLAW, APRIL | 3032914696    |            | DENVER      | CO          | 29.0           |
| 60316            | 09/22/93    | 5:09 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.4            |
| 60316            | 09/22/93    | 5:03 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 28.1           |
| 60316            | 09/22/93    | 5:02 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.3            |
| 60316            | 09/22/93    | 4:09 PM     | BRESLAW, APRIL | 4162060       |            | WASHINGTON  | DC          | 51.7           |
| 60316            | 09/22/93    | 4:07 PM     | BRESLAW, APRIL | 2156506304    |            | VALLEYFORG  | PA          | 1.1            |
| 60316            | 09/22/93    | 4:05 PM     | BRESLAW, APRIL | 7035165723    |            | ALEXANDRIA  | VA          | 0.5            |
| 60316            | 09/22/93    | 3:55 PM     | BRESLAW, APRIL |               | 0          | I           |             | 9.7            |
| 60316            | 09/22/93    | 3:49 PM     | BRESLAW, APRIL | 4838300       |            | WASHINGTON  | DC          | 5.7            |
| 60316            | 09/22/93    | 3:39 PM     | BRESLAW, APRIL |               | 87725      | 550 17TH    |             | 1.2            |
| 60316            | 09/22/93    | 3:30 PM     | BRESLAW, APRIL | 4045817949    |            | ATLANTA     | GA          | 9.0            |
| 60316            | 09/22/93    | 3:29 PM     | BRESLAW, APRIL | 7035186557    |            | ALEXANDRIA  | VA          | 0.8            |
| 60316            | 09/22/93    | 2:46 PM     | BRESLAW, APRIL | 3122072800    |            | CHICAGO     | IL          | 2.6            |
| 60316            | 09/22/93    | 1:46 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1.6            |
| 60316            | 09/22/93    | 1:24 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.7            |
| 60316            | 09/22/93    | 1:07 PM     | BRESLAW, APRIL |               | 0          | I           |             | 0.6            |
| 60316            | 09/22/93    | 12:09 PM    | BRESLAW, APRIL |               | 0          | I           |             | 15.6           |
| 60316            | 09/22/93    | 11:01 AM    | BRESLAW, APRIL |               | 0          | I           |             | 0.4            |
| 60316            | 09/22/93    | 10:38 AM    | BRESLAW, APRIL |               | 0          | I           |             | 1.1            |
| 60316            | 09/22/93    | 10:32 AM    | BRESLAW, APRIL | 2898660       |            | WASHINGTON  | DC          | 38.7           |
| 60316            | 09/22/93    | 10:28 AM    | BRESLAW, APRIL |               | 0          | I           |             | 3.4            |
| 60316            | 09/22/93    | 10:27 AM    | BRESLAW, APRIL | 2898660       |            | WASHINGTON  | DC          | 0.1            |
| 60316            | 09/22/93    | 10:11 AM    | BRESLAW, APRIL | 3122072800    |            | CHICAGO     | IL          | 2.3            |

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|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/22/93    | 10:08 AM    | BRESLAW, APRIL | 3122042800    |            | CHICAGO     | IL          | 0 0            |
| 60316            | 09/22/93    | 10:08 AM    | BRESLAW, APRIL | 3122072800    |            | CHICAGO     | IL          | 2 6            |
| 60316            | 09/22/93    | 9:54 AM     | BRESLAW, APRIL | 2136838711    |            | LOSANGELES  | CA          | 2 4            |
| 60316            | 09/22/93    | 9:45 AM     | BRESLAW, APRIL | 0             | I          |             |             | 0 4            |
| 60316            | 09/21/93    | 6:19 PM     | BRESLAW, APRIL | 0             | I          |             |             | 1 0            |
| 60316            | 09/21/93    | 6:12 PM     | BRESLAW, APRIL | 0             | I          |             |             | 1 6            |
| 60316            | 09/21/93    | 5:59 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 4            |
| 60316            | 09/21/93    | 5:53 PM     | BRESLAW, APRIL | 6196997658    |            | SAN DIEGO   | CA          | 2 8            |
| 60316            | 09/21/93    | 5:51 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1 2            |
| 60316            | 09/21/93    | 5:36 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 8            |
| 60316            | 09/21/93    | 5:28 PM     | BRESLAW, APRIL | 0             | I          |             |             | 22 4           |
| 60316            | 09/21/93    | 4:50 PM     | BRESLAW, APRIL | 8063725050    |            | NORTHERN    | TX          | 38 5           |
| 60316            | 09/21/93    | 4:48 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 0 5            |
| 60316            | 09/21/93    | 4:32 PM     | BRESLAW, APRIL | 67442         |            | DCS NETWK   |             | 5 4            |
| 60316            | 09/21/93    | 4:27 PM     | BRESLAW, APRIL | 7368250       |            | WASHINGTON  | DC          | 0 5            |
| 60316            | 09/21/93    | 3:59 PM     | BRESLAW, APRIL | 0             | I          |             |             | 4 8            |
| 60316            | 09/21/93    | 3:33 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 2            |
| 60316            | 09/21/93    | 3:02 PM     | BRESLAW, APRIL | 86792         |            | 550 17TH    |             | 1 5            |
| 60316            | 09/21/93    | 3:01 PM     | BRESLAW, APRIL | 2156506149    |            | VALLEYFORD  | PA          | 0 6            |
| 60316            | 09/21/93    | 2:32 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 3            |
| 60316            | 09/21/93    | 2:22 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 6            |
| 60316            | 09/21/93    | 2:20 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 3            |
| 60316            | 09/21/93    | 2:16 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 2            |
| 60316            | 09/21/93    | 2:15 PM     | BRESLAW, APRIL | 3124196900    |            | CHICAGO     | IL          | 37 8           |
| 60316            | 09/21/93    | 2:10 PM     | BRESLAW, APRIL | 3938400       |            | WASHINGTON  | DC          | 2 4            |
| 60316            | 09/21/93    | 1:55 PM     | BRESLAW, APRIL | 87269         |            | 550 17TH    |             | 12 0           |
| 60316            | 09/21/93    | 1:54 PM     | BRESLAW, APRIL | 83607         |            | 550 17TH    |             | 0 1            |
| 60316            | 09/21/93    | 1:38 PM     | BRESLAW, APRIL | 0             | I          |             |             | 15 8           |
| 60316            | 09/21/93    | 11:28 AM    | BRESLAW, APRIL | 0             | I          |             |             | 18 4           |
| 60316            | 09/21/93    | 11:00 AM    | BRESLAW, APRIL | 0             | I          |             |             | 0 7            |
| 60316            | 09/21/93    | 10:45 AM    | BRESLAW, APRIL | 0             | I          |             |             | 0 1            |
| 60316            | 09/21/93    | 9:37 AM     | BRESLAW, APRIL | 0             | I          |             |             | 1 0            |
| 60316            | 09/21/93    | 9:32 AM     | BRESLAW, APRIL | 0             | I          |             |             | 0 3            |
| 60316            | 09/21/93    | 9:14 AM     | BRESLAW, APRIL | 0             | I          |             |             | 21 1           |
| 60316            | 09/21/93    | 9:11 AM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 1 8            |
| 60316            | 09/21/93    | 9:10 AM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 1 0            |
| 60316            | 09/21/93    | 1:47 AM     | BRESLAW, APRIL | 0             | I          |             |             | 2 0            |
| 60316            | 09/18/93    | 4:19 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 5            |
| 60316            | 09/18/93    | 3:53 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 3            |
| 60316            | 09/18/93    | 3:50 PM     | BRESLAW, APRIL | 0             | I          |             |             | 0 5            |



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|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/18/93    | 12.32 PM    | BRESLAW, APRIL | 2156506304    |            | VALLEYFORG  | PA          | 0.9            |
| 60316            | 09/18/93    | 11 55 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 09/18/93    | 10 56 AM    | BRESLAW, APRIL | 2156506304    |            | VALLEYFORG  | PA          | 1.0            |
| 60316            | 09/18/93    | 10 42 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.1            |
| 60316            | 09/18/93    | 10 26 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 09/18/93    | 9 22 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 09/18/93    | 8 14 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 09/17/93    | 4 56 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 2.3            |
| 60316            | 09/17/93    | 4 44 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 9.2            |
| 60316            | 09/17/93    | 4 29 PM     | BRESLAW, APRIL | 411           |            | DIR ASSIST  | DC          | 0.7            |
| 60316            | 09/17/93    | 4 29 PM     | BRESLAW, APRIL | 7038384560    |            | ALEXANDRIA  | VA          | 2.4            |
| 60316            | 09/17/93    | 3 05 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.4            |
| 60316            | 09/17/93    | 2 47 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 19.7           |
| 60316            | 09/17/93    | 2 44 PM     | BRESLAW, APRIL | 2157512000    |            | PHILADELPH  | PA          | 0.8            |
| 60316            | 09/17/93    | 2 43 PM     | BRESLAW, APRIL | 2155551212    |            | DIR ASSIST  | PA          | 1.0            |
| 60316            | 09/17/93    | 11 58 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 09/17/93    | 11 37 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 09/17/93    | 10 54 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 6.6            |
| 60316            | 09/17/93    | 10 45 AM    | BRESLAW, APRIL | 8611085       |            | WASHINGTON  | DC          | 1.0            |
| 60316            | 09/17/93    | 10 34 AM    | BRESLAW, APRIL | 5543314       |            | WASHINGTON  | DC          | 2.7            |
| 60316            | 09/17/93    | 10 32 AM    | BRESLAW, APRIL | 4847002       |            | WASHINGTON  | DC          | 1.4            |
| 60316            | 09/17/93    | 10 31 AM    | BRESLAW, APRIL | 4847002       |            | WASHINGTON  | DC          | 1.0            |
| 60316            | 09/17/93    | 10 10 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 19.3           |
| 60316            | 09/16/93    | 6 30 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.0            |
| 60316            | 09/16/93    | 5 53 PM     | BRESLAW, APRIL | 2136838711    |            | LOSANGELES  | CA          | 9.2            |
| 60316            | 09/16/93    | 5 47 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 1.9            |
| 60316            | 09/16/93    | 5 38 PM     | BRESLAW, APRIL | 4847002       |            | WASHINGTON  | DC          | 3.9            |
| 60316            | 09/16/93    | 4 47 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.6            |
| 60316            | 09/16/93    | 4 13 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.9            |
| 60316            | 09/16/93    | 4 09 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.3            |
| 60316            | 09/16/93    | 3 13 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 0.5            |
| 60316            | 09/16/93    | 2 16 PM     | BRESLAW, APRIL | 2156506304    |            | VALLEYFORG  | PA          | 20.1           |
| 60316            | 09/16/93    | 2 13 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 1.0            |
| 60316            | 09/16/93    | 1 58 PM     | BRESLAW, APRIL | 3124196900    |            | CHICAGO     | IL          | 1.0            |
| 60316            | 09/16/93    | 1 50 PM     | BRESLAW, APRIL | 83722         |            | 550 17TH    |             | 4.5            |
| 60316            | 09/16/93    | 1 49 PM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 0.4            |
| 60316            | 09/16/93    | 1 47 PM     | BRESLAW, APRIL | 6196997658    |            | SAN DIEGO   | CA          | 2.0            |
| 60316            | 09/16/93    | 12 17 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 0.7            |
| 60316            | 09/16/93    | 12 05 PM    | BRESLAW, APRIL | 0             | 1          |             |             | 2.4            |
| 60316            | 09/16/93    | 11 47 AM    | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 0.2            |

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|------------------|-------------|-------------|----------------|---------------|------------|-------------|-------------|----------------|
| 60316            | 09/16/93    | 11 03 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 03             |
| 60316            | 09/16/93    | 10 18 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 65             |
| 60316            | 09/16/93    | 9 50 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 08             |
| 60316            | 09/15/93    | 5 24 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 02             |
| 60316            | 09/15/93    | 4 59 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 379            |
| 60316            | 09/15/93    | 4 43 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 03             |
| 60316            | 09/15/93    | 4 36 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 101            |
| 60316            | 09/15/93    | 4 28 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 39             |
| 60316            | 09/15/93    | 4 16 PM     | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 112            |
| 60316            | 09/15/93    | 3 53 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 107            |
| 60316            | 09/15/93    | 3 32 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 01             |
| 60316            | 09/15/93    | 3 32 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 123            |
| 60316            | 09/15/93    | 3 29 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 04             |
| 60316            | 09/15/93    | 3 16 PM     | BRESLAW, APRIL | 8097228200    |            | SANTURCE    | PR          | 77             |
| 60316            | 09/15/93    | 3 13 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 00             |
| 60316            | 09/15/93    | 3 12 PM     | BRESLAW, APRIL | 2136838783    |            | LOSANGELES  | CA          | 09             |
| 60316            | 09/15/93    | 3 08 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 25             |
| 60316            | 09/15/93    | 2 55 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 122            |
| 60316            | 09/15/93    | 2 26 PM     | BRESLAW, APRIL | 0             | 1          |             |             | 04             |
| 60316            | 09/15/93    | 1 42 PM     | BRESLAW, APRIL | 3129843100    |            | CHICAGO     | IL          | 07             |
| 60316            | 09/15/93    | 12 17 PM    | BRESLAW, APRIL | 83761         |            | 550 17TH    |             | 03             |
| 60316            | 09/15/93    | 12 16 PM    | BRESLAW, APRIL | 87270         |            | 550 17TH    |             | 05             |
| 60316            | 09/15/93    | 12 10 PM    | BRESLAW, APRIL | 7038230615    |            | ALEXANDRIA  | VA          | 06             |
| 60316            | 09/15/93    | 12 09 PM    | BRESLAW, APRIL | 411           |            | DIR ASSIST  | DC          | 05             |
| 60316            | 09/15/93    | 12 04 PM    | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 22             |
| 60316            | 09/15/93    | 11 47 AM    | BRESLAW, APRIL | 2015380800    |            | MORRISTOWN  | NJ          | 121            |
| 60316            | 09/15/93    | 11 42 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 22             |
| 60316            | 09/15/93    | 11 30 AM    | BRESLAW, APRIL | 0             | 1          |             |             | 63             |
| 60316            | 09/15/93    | 11 19 AM    | BRESLAW, APRIL | 5543314       |            | WASHINGTON  | DC          | 19             |
| 60316            | 09/15/93    | 9 29 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 04             |
| 60316            | 09/15/93    | 9 12 AM     | BRESLAW, APRIL | 0             | 1          |             |             | 527            |
| 60316            | 09/15/93    | 8 40 AM     | BRESLAW, APRIL | 8226340       |            | WASHINGTON  | DC          | 04             |

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20222600707# 3/13

To: Stephen J. Katsenos@Comm@RTCCDC  
Felisa M. Nauringer@Comm@RTCCDC

Cc: Thomas L. Hinder@Legal-pla@RTCCDC

From: April A. Breslaw@Legal-pla@RTCCDC

Subject: Inquiry from Sue Schmidt: Madison Guaranty

Date: Wednesday, September 29, 1993 11:41:51 EDT

Attach:

Certify: N

Forwarded by:

DEPOSITION  
EXHIBIT

AAB 3

As you may know, Sue Schmidt (of Wash. Post) called both Felisa and me yesterday. She's focused on the Rose Law Firm's representation of the RTC. If be honest, I think that this is a non-story. However, she asked me to check something and call her back. I have now reviewed our old files and spoken to the Rose partners who worked with me on the Madison case. As a result, I have a little info to pass along. Since it's probably more appropriate for one of you to return Sue's call, I'll pass the info to you.

Apparently, a Rose Firm lawyer spent a short amount of time in 1985 or 1986 evaluating a plan to help Madison raise capital. Sue Schmidt believes that Rose lawyer was Mrs. Clinton. According to the Rose partners that I spoke of, Mrs. Clinton did NOT work on this project. We can't find any documentation of this old work, so I don't think that we can offer an opinion. For what it's worth, the Rose people believe that we don't have documentation because the project was so small that they doubt that they opened a file or billed for the time spent. In any event, the firm's press spokesman is Ron Clark at (301) 373-9111. They encourage us to give Ron's name to reporters so that the firm can respond.

Sue's allegations go further. To understand them, you have to understand the following facts.

In 1988, Madison sued its accountants, Frost and Co. Madison hired Borod and Huggins, a firm which frequently represents D&O's against the government, to represent the S&L against Frost. In March 1989, Madison failed. As I'm sure know, the RTC did not exist then. As an attorney in what was then called the "Directors and Officers Liability Section" of the FDIC, I was assigned Madison. Because of the direct conflicts that the Borod firm had (among other things, they were representing D&O's against me in a case which dealt with loss suffered by the Corning Bank, in Corning Ark.), I replaced them. I chose the Rose firm because of the positive experience that I'd had with them on other professional liability matters.

Sue would LIKE to be able to allege that when the Rose firm was hired in 1989 they somehow blocked our attorney malpractice investigation and thereby avoided being sued by us for the capital raising project of 1985 or 1986. The defect in this theory is that I hired the Rose firm to handle ONE project: the accounting malpractice case against Frost. The firm was NOT hired to do a general investigation of PLS claims. (In 1989 in the FDIC, the presumption was that our own in-house investigators handled investigations. We did not make routine use of consultants or outside counsel to handle such projects... particularly with a small S&L like Madison.) I tried to explain this to Sue yesterday, but I had the impression that it wasn't sinking in. You may be able to convey this message to a reporter who doesn't really want to hear

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Sue asked me to check what the Rose firm had represented about conflicts when they were hired. Unfortunately, I have not been able to find correspondence that's specific to Madison. I believe that I asked about conflicts, but in March 1989 I was assigned close to 40 banks and S&L's, so it's possible that I didn't get their response in writing.

I have found a letter from Vince Foster (who was with the Rose firm at the time) dated Feb. 28, 1989 which responds to a general solicitation for Arkansas savings and loan work. In that letter, Mr. Foster states that the firm "does not represent any savings and loan association in state or federal regulatory matters." He concludes that "we believe that the firm would not be ethically disqualified from serving as fee counsel as generally discussed herein." Since the Madison capital raising project was concluded in 1985 or 1986, these statements were true in 1989 when Foster wrote his letter to FDIC lawyers John Thomas and Don McKinley.

Bottom line: I don't have any reason to think that the Rose firm misled us about conflicts. Further, I don't have any reason to think that any Rose lawyer committed malpractice in connection with Madison and I know that the Rose firm was not hired to investigate such claims. I am not aware of any evidence to support the "cover up" allegation.

Sorry this email is so long.

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**DEPOSITION OF CHARLES A. BANKS  
IN RE: S. RES. 120**

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**MONDAY, OCTOBER 23, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of CHARLES A. BANKS, called for examination pursuant to notice of deposition, at 10:35 a.m. in Room 124 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.  
Majority Deputy Special Counsel  
RICHARD BEN-VENISTE, Esq.  
Minority Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

CHARLES J. SGRO, Esq.  
Special Assistant to the Deputy Attorney General  
U.S. Department of Justice  
Tenth Street & Constitution Avenue, NW  
Washington, DC 20530  
On behalf of the Deponent.

**ALSO PRESENT: TIMOTHY P. MITCHELL**



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## P R O C E E D I N G S

Whereupon,

CHARLES A. BANKS

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. GICALE:

Q Could you please state your name for the record.

A Charles A. Banks.

Q And your present business address?

A 425 West Capitol, Suite 1590, Little Rock 72201.

Q And what is your business phone number?

A 501-375-8700.

Q And what is your present position?

A I am an attorney.

Q Are you in practice with anyone else?

A Yes. Mac Dodson, M-a-c, D-o-d-s-o-n; Mike Spades, S-p-a-d-e-s; and Mark Carter.

4

Q And are you engaged in the general practice of law, or are you specialized in criminal law, or what is your specialty?

A I probably do primarily, 60 to 70 percent, civil litigation; I do criminal defense in the state and federal courts, and civil litigation in the state and federal courts.

Q Now, where were you employed between August 1992 and March of 1993?

A August of '92, March of '93, U.S. Attorney's Office.

Q You were the U.S. Attorney where?

A Eastern District of Arkansas, Little Rock.

Q How long were you the U.S. Attorney?

A I became interim U.S. Attorney in November of 1987 and was confirmed by the Senate in early February, I believe, of '88 and served continually until my last date of service, which was February of whatever -- 27th, 28th, last day of February of 1993. And I had given notice to my senator, and I think to the department, too, in early January that that would be my effective date of termination.

1 Q And it was from there that you went into  
2 practice with Mr. Dodson and the other individuals  
3 you named?

4 A Right, right. I had been in practice, in  
5 private practice for a long time before I became U.S.  
6 Attorney.

7 Q With those same individuals?

8 A No.

9 Q With which law firm?

10 A The law firm was Banks & Ritchey,  
11 R-i-t-c-h-e-y, which is located in my home county of  
12 Mississippi County, Arkansas, which is extreme east  
13 Arkansas. I practiced in a primarily four-,  
14 five-county area, for about 14 years before I became  
15 U.S. Attorney.

16 Q Now, Mr. Banks, are you aware of -- let me  
17 back up for a second. Could you strike that  
18 question.

19 Now this deposition, Mr. Banks, is being  
20 conducted pursuant to Senate Resolution 120. The  
21 resolution establishes a special committee  
22 administered by the Banking Committee to conduct an

1 investigation involving Whitewater Development  
2 Corporation, Madison Guaranty Savings & Loan  
3 Association, Capital Management Services, Inc., the  
4 Arkansas Development Finance Authority and/or related  
5 matters.

6 Section (1)(b)(2)(c) of Resolution 120  
7 authorizes investigation and public hearings into  
8 whether the Department of Justice has improperly  
9 handled RTC criminal referrals relating to Madison  
10 Guaranty Savings & Loan Association, or Whitewater  
11 Development Corporation. This will be the focus of  
12 today's deposition.

13 You were requested to testify on October  
14 5, 1995, your deposition is in advance of public  
15 hearings scheduled to take place in November. It is  
16 possible you may testify at those public hearings.

17 We will ask you a series of questions. You  
18 are testifying under oath. If you don't understand a  
19 question, let us know and we will rephrase it.

20 The stenographer will prepare a record of  
21 questions and answers. The deposition will be  
22 treated as committee confidential until the

1 commencement of the hearings. Prior to the hearings,  
2 you will receive a letter from the committee telling  
3 you that you may come to the Senate to review the  
4 transcript of your deposition and make notes of any  
5 corrections for transcription on an errata sheet. If  
6 you are called to testify at a public hearing, you  
7 will be permitted to have a copy of your deposition  
8 transcripts four days in advance of your testimony.  
9 You may be represented by counsel.

10 Objections to the form of the questions  
11 will be noted for the record. Counsel may object on  
12 grounds of privilege or relevance. The committee  
13 chairman may rule on objections where the witness  
14 refuses to answer a question.

15 Do you understand?

16 A No, I don't understand all of that. I want  
17 to make a point of inquiry. If I am called back to  
18 appear before the Senate, I want to be sure I  
19 understand that you are saying that the only way I  
20 can receive a copy before I testify is to come to  
21 Washington? I won't receive a copy of this, in order  
22 to refresh my memory, if I am called to testify?

1 MR. GICALE: That's the present plan. Now  
2 I know something else is worked out with respect to  
3 Department of Justice. Off the record.

4 (Discussion off the record.)

5 MR. GICALE: Mr. Banks, you have indicated  
6 that you would like the opportunity review the  
7 transcript without having to come to Washington to do  
8 that, if you were required to testify before the  
9 Senate committee. And I have indicated to you that I  
10 have had a discussion with Mr. Ben-Veniste, and I  
11 would inquire into the possibility of doing that,  
12 with Mr. Chertoff, counsel to the Majority.

13 MR. BEN-VENISTE: It's been done before.  
14 Mr. Gicale was not on the staff at the time of the  
15 last hearings. As a regular course of our doing  
16 business, we provided to out-of-town witnesses copies  
17 of their deposition transcript on the representation  
18 that those witnesses would not make copies available  
19 to any other parties. And I am confident that such  
20 an accommodation would be appropriate in your case.

21 THE WITNESS: Certainly. I would not make  
22 it available to any other party.

1 MR. GICALE: I am not in a position to  
2 offer it. I have to check with Mr. Chertoff to see  
3 if that's appropriate. I am not disputing  
4 Mr. Ben-Veniste's position on it.

5 THE WITNESS: Sure, I understand.

6 MR. GICALE: Any other questions at this  
7 point?

8 THE WITNESS: No.

9 BY MR. GICALE:

10 Q Are you aware, Mr. Banks, of the  
11 committee's document request to the Department of  
12 Justice dated August 25, 1995?

13 A No.

14 Q Has the Department of Justice asked you to  
15 search for -- did they notify you that there was a  
16 request for documents?

17 A No.

18 Q Did you search for any responsive  
19 documents, any documents with respect to your  
20 deposition here today, and bring any --

21 A Just the letters. I got my letters out  
22 that I wrote, the letter of January 27, and the

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10

1 letter of October the 16th, and read those.

2 Q Now, where did you obtain those?

3 A I read them in his office this morning,  
4 Mr. Sgro, as well as I read them before because I  
5 gave a statement to the FBI and I gave them copies,  
6 or they gave me copies of the letters, so --

7 Q Are the letters the only items you reviewed  
8 before your testimony this morning?

9 A The letters, and the work notes. I made  
10 some work notes when I did my analysis of the first  
11 referral, and I looked at that before I came up.

12 MR. GICALE: Mr. Sgro, do you have copies  
13 of those work notes, because we have not seen them?

14 MR. SGRO: I don't have copies of the work  
15 notes, either. Can we go off the record for a  
16 second.

17 MR. GICALE: Yes.

18 (Discussion off the record.)

19 BY MR. GICALE:

20 Q Did you keep a copy of your work notes?

21 A Sure, I have a copy of everything that I  
22 gave the FBI, which was a copy of the referral, a



1 copy of my letters, and a copy of my -- I call them  
2 rough notes, just notes that I sat there and made to  
3 myself when I was going through the analysis of the  
4 referral.

5 Q And you have kept copies of these documents  
6 in your personal possession?

7 A Yes, yes.

8 Q Do you have them here today?

9 A No.

10 MR. SGRO: I would say if we get a request,  
11 we will be more than happy to provide those to the  
12 committee, upon receiving them from Mr. Banks.

13 MR. BEN-VENISTE: I don't understand why  
14 they weren't turned over by independent counsel.

15 MR. SGRO: I don't know the answer to that.

16 THE WITNESS: I don't know the answer to  
17 that, either.

18 MR. BEN-VENISTE: Do you know, Lou?

19 MR. GICALE: I don't.

20 BY MR. GICALE:

21 Q So, what you have back in Arkansas, I take  
22 it, are copies of notes, the referral. Do you have a

1 copy of the criminal referral?

2 A Right.

3 Q And the two letters, the October --

4 A Actually, I think it was three letters,  
5 it's a letter of October the 6th; October the 16th,  
6 and January the 27th of '93. Those are the only  
7 letters I wrote when I was U.S. Attorney that  
8 pertains to that referral.

9 Q When you say October 6, who was that letter  
10 to?

11 A That was Mac Dodson's letter.

12 THE WITNESS: May I explain this to you so  
13 you will understand it better?

14 MR. BEN-VENISTE: Our problem is we have  
15 made a request to the Justice Department which then  
16 turns the request over to independent counsel because  
17 apparently Justice does not have a copy of this.

18 MR. SGRO: We don't have a copy of this.

19 MR. BEN-VENISTE: I don't understand why  
20 independent counsel hasn't turned this over to us by  
21 this time. Do you understand this, Lou?

22 MR. GICALE: No, I don't. We received the

1 10/16 letter and the --

2 MR. SGRO: We had those two letters and  
3 produced them.

4 MR. GICALE: We did not receive Mr. Banks's  
5 notes and we were not aware he had a copy of the  
6 referral.

7 BY MR. GICALE:

8 Q Just a couple of questions with regard to  
9 these documents. You took these with you when you  
10 left the office; is that correct?

11 A Yes, I took -- I had three or four boxes  
12 because I tried lawsuits when I was a U.S. Attorney.  
13 I wasn't just an administrator. And when I took all  
14 my boxes out, one of the files in my boxes that I  
15 stored in my attic after I went back to private  
16 practice pertained to this referral, or I will call  
17 it Whitewater. And when the FBI asked me about it, I  
18 said I don't know what I've got, I'll have to go look  
19 for it.

20 So I did, I went and looked and pulled it  
21 out and that's what I had in there. And I gave them  
22 a copy, they said would you please produce it for

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1 us. I said certainly. I gave them the originals of  
2 everything I had in my file, including, I think,  
3 there was a newspaper article in there, dated like  
4 March, in The Arkansas Democrat. And I made a copy  
5 of everything that I handed over to the FBI.

6 Q Let me ask you this. Can you make copies  
7 of this information available to Mr. Sgro and ask him  
8 to turn it over to us?

9 A Sure. I don't have an attorney-client  
10 relationship with this gentleman. I mean, I am  
11 here -- I am not.

12 Q I understand.

13 MR. BEN-VENISTE: Why don't you elaborate  
14 on that point because the record should reflect, as  
15 has been the case with other witnesses who were  
16 former employees of the Department of Justice, that  
17 Mr. Sgro is here representing the Department of  
18 Justice, if that is the case, and not you  
19 personally.

20 THE WITNESS: Well, I don't really  
21 understand, other than I met him for the first time  
22 today. I talked to him on the phone this week for

1 the first time. And Mr. Fishman, I believe is his  
2 name, called me, he was the first person to call me,  
3 and indicated that the department would be present.  
4 And I indicated that's fine, I have no problem with  
5 that, I guess under your prior employee rule. But as  
6 far as me being here, bringing personal counsel to  
7 represent me, I do not. But if, in the former  
8 employee relationship, I have that attorney-client,  
9 then I guess I do.

10 BY MR. GICALE: In the alternative --

11 MR. BEN-VENISTE: Saves you the trouble of  
12 making two copies, for the majority and minority, so  
13 Mr. Sgro can take care of that.

14 MR. GICALE: And I think it also would be  
15 helpful if the Department of Justice had copies.

16 MR. SGRO: I think what Mr. Banks said he  
17 would not have a problem providing copies of the  
18 document which we will in turn produce to the  
19 committee.

20 THE WITNESS: I am assuming it is  
21 permissible for me to give them. I gave them to the  
22 special prosecutor, and if I am not violating the

1 procedure rules, I have no problem giving this to  
2 you.

3 MR. SGRO: I want to put on the record that  
4 the Department of Justice would want to notify the  
5 Office of Independent Counsel that these documents  
6 were provided to it, and that the department intends  
7 to produce it to the committee, as has been the  
8 practice throughout this document production.

9 MR. BEN-VENISTE: As long as it doesn't  
10 delay any further production --

11 MR. SGRO: I think the documents could be  
12 faxed.

13 MR. GICALE: Or at least overnight mail.

14 THE WITNESS: I can Fed Ex or fax them.

15 MR. SGRO: I will represent to the  
16 committee the day the department receives them, they  
17 will be provided to the committee, assuming the  
18 Office of Independent Counsel has no objection.

19 BY MR. GICALE:

20 Q Now, the list that you have just recited,  
21 are those all the documents that you have, you would  
22 have --

1 A Yes.

2 Q -- with respect to this matter at that  
3 point in time?

4 A Yes.

5 Q And with respect to what you reviewed this  
6 morning before you testified, that was just limited  
7 to -- that was limited to the October 16 and the  
8 January 27 letters --

9 A Right. The last time I read or even tried  
10 to look at the referral was back whenever I made my  
11 statement to the FBI, which was in, I guess, the  
12 summer or spring. I think it may have been a long  
13 time ago.

14 MR. SGRO: I think it is important to note  
15 when the reference to the FBI is made, it is made in  
16 conjunction with the Office of Independent Counsel.  
17 I think it is significant.

18 THE WITNESS: Yes.

19 BY MR. GICALE:

20 Q But with respect to this morning's review  
21 at Justice, all you reviewed was two letters?

22 A Yes, two letters. One -- was the Dodson

1 letter in there?

2 MR. SGRO: No.

3 THE WITNESS: Sorry, just two then.

4 BY MR. GICALE:

5 Q Just two?

6 A Right.

7 Q Did you speak to any witnesses who may have  
8 come to testify before this committee or who you know  
9 who have come to testify before this committee, or  
10 who you know are to testify in front of this  
11 committee?

12 A Two. I talked to my partner, Mac Dodson.

13 Q When did you speak with him?

14 A I guess day before yesterday. He came up  
15 last week and I got finished with a trial so it had  
16 to have been -- what is today? Within the past two  
17 or three days.

18 Q Did you talk to him about the substance of  
19 your testimony or the substance of his testimony?

20 A We didn't talk more than I would say a  
21 minute and a half. I asked him, you know, just  
22 generally what went on, he said it is about the same

1 thing, and he was there for two -- a couple of hours,  
2 or words to that effect, and that it is the same  
3 thing we have already testified to. We didn't  
4 discuss dates, letters, review anything or prepare  
5 any substance. Just a casual --

6 Q Did he tell you the questions that were  
7 asked?

8 A Oh, no.

9 Q Did he tell you the answers he gave?

10 A No.

11 Q Did you tell him what you expected to  
12 testify to?

13 A No.

14 Q Who else did you talk to, that you know who  
15 has testified or is expected --

16 A Last week I called Paula Casey, and the  
17 substance of that conversation, was are you going to  
18 have to go up and give a deposition, and she said  
19 yes. I said anybody else going to have to go and she  
20 said yes, there are several of us. I said do you  
21 think there is any way we can get them to come down  
22 here and take all the depositions in Arkansas because

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20

1 it is a burden on me to go up there.

2 She said I don't see it, I have already had  
3 to give one. And that's about it. In fact, that's  
4 not about it. That is it.

5 So you will understand this: I have made a  
6 conscious rule that I would not discuss, except with  
7 my wife, way back at the beginning of this, the facts  
8 and circumstances or substance of my testimony with  
9 anybody. Not the press. I mean, I have had numerous  
10 inquiries to discuss it. I have refused across the  
11 board and still do.

12 Q And again that's all, did you not talk  
13 substance with Paula Casey?

14 A No, no. Never have talked substance with  
15 her since the beginning.

16 Q Did you talk with any other witnesses who  
17 have come to testify before this committee, or who  
18 you know expect to testify before the committee?

19 A No, I don't even know, other than you  
20 mentioned that Michael Johnson was up here. This  
21 gentleman mentioned Michael Johnson was here this  
22 afternoon. Other than that, I didn't know the



1 identity of anybody else that was testifying except  
2 Mac Dodson and Paula.

3 Q Now, when did you first hear of an RTC  
4 criminal referral referring to Madison Guaranty or  
5 Whitewater Development Corporation?

6 A Well, of course, we had already prosecuted  
7 McDougal, in I think '89 or '90. And my first  
8 recollection of hearing anything about it was in -- I  
9 want to say it was the second week in September of  
10 '92, Mac came in and said we've gotten a referral  
11 and --

12 Q Now, "Mac" is Mac Dodson?

13 A Yes, I'm sorry. Mr. Dodson was my first  
14 assistant United States Attorney. And he came in and  
15 indicated that we have a referral that's come in from  
16 RTC. I said so what? He said, well, this referral,  
17 or words to the effect, it is another referral on  
18 McDougal. And he also said it lists Bill and Hillary  
19 Clinton as witnesses. And I said, well, let's get it  
20 in here and let's take a look, or words to that  
21 effect.

22 Q I will show you what's marked as Bates

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22

1 006695, which I believe is the criminal referral  
2 number C0004 from the RTC, with respect to this  
3 matter. Is that the referral that you received in  
4 September of 1992, or a copy of it?

5 A Yes, let me look at it a second. I have  
6 referenced it as C004 because that's how it was  
7 referred to by the FBI special prosecutors. Let me  
8 just flip through the pages. I am assuming --

9 Q You referenced it as C004 as opposed to  
10 C0004. I want to make sure there was no  
11 misunderstanding.

12 A Yes, C0004 is the referral that I have been  
13 made aware of. When I use the term "Whitewater,"  
14 that's the only referral I ever saw at any time.

15 Q That's the one you received in 1992?

16 A Right.

17 Q And that's the one you have a copy of at  
18 home?

19 A Right, and that I gave a copy of it to the  
20 FBI when they asked me about it. Yes, this is a copy  
21 of that referral.

22 Q I am going to show you what's marked as

1 Bates number 6694. This is a letter dated September  
2 1, 1992 to the Honorable Charles Banks from L.  
3 Richard Iorio. Can you identify that for us,  
4 please.

5 A I am assuming that that's the offer letter  
6 that came with the referral. I don't remember  
7 reading this. I mean, I just --

8 Q There is a date stamp of the U.S.  
9 Attorney's office in Little Rock in the letter?

10 A Sure.

11 Q It is dated, I believe, September 3, 1992?

12 A Right.

13 Q Would that have been about the time you  
14 received that referral?

15 A Yes, I would think so because I wouldn't  
16 have received it directly. Mac would have gotten  
17 this first.

18 Q Okay.

19 A That's Mr. Dodson. Yes, I don't quarrel  
20 with that date. That's probably correct and accurate  
21 because that looks like one of our stamp marks.

22 Q Now, you stated that once you received --

1 Mr. Dodson informed you that the referral had come  
2 in, what, if anything, did you do with it?

3 A Well, the first thing I did, I said --  
4 well, that's great or words to that effect. I said  
5 let's -- bring it down here and let's take a look at  
6 it. And at that point in time, I didn't do any  
7 analysis of this referral, C0004. And I told Mac, I  
8 said, I believe I told him to check with Sandra  
9 Cherry and see if there was anything generally --  
10 discuss it with her and see if there was anything new  
11 in this referral that had not been looked at before.

12 And I wanted him to take it and hold on to  
13 it and I did not want it assigned out because I was  
14 going to try to look at this very carefully, very  
15 cautiously, and not -- in fact, I think I told him at  
16 that point in time we were not going to do anything,  
17 I am almost sure I said we were not going to do  
18 anything with this referral until after the  
19 election. We will work it just like any other  
20 referral.

21 Because I believe -- I don't remember if it  
22 was the first conversation or shortly thereafter, he

1 came in and he said I have had a call from a woman  
2 named Jean Lewis and she wants to know what we are  
3 doing with this referral and whether we have issued  
4 grand jury subpoenas, and why not. And I said, well,  
5 forget it. Just forget it, we are not going to  
6 respond to Jean Lewis. I said we are going to let  
7 this alone for the time being and work it properly.

8 Q Now, when you say you weren't going to do  
9 anything until the election --

10 A After the election.

11 Q Until after the election, was it your  
12 intent to work it at the pace that was needed to get  
13 it done, or was it your intent to not work it until  
14 after the election?

15 A Well, my intent was that, when the election  
16 was over with, we would pick it up and work it, with  
17 the -- in the same manner that we basically worked  
18 it -- end up working it before the election, and that  
19 is we are going to see, get the FBI involved and see  
20 whether or not the referrals had merit, you see,  
21 because -- let me be sure about this.

22 Throughout this process, prior to the

1 election, there was no doubt in my mind, from the  
2 telephone calls coming in to that office from Jean  
3 Lewis and from the discussions that I had with the  
4 FBI, that the real --

5 MR. BEN-VENISTE: Hang on. Let him finish  
6 his answer.

7 THE WITNESS: That the real heart and soul  
8 of why there was such a sense of urgency is who the  
9 witnesses were, not Mr. McDougal and his wife. They  
10 were almost somewhat of an afterthought. Well,  
11 that's not a fair choice of words. They were not the  
12 focus of the sense of urgency.

13 BY MR. GICALE:

14 Q Okay. Now, who were you getting this  
15 information from which you led you to believe that  
16 they were not the focus of this, in terms of the  
17 sense of urgency?

18 A Well, the first person was by October  
19 the -- well, middle of October, prior to the 16th, we  
20 had at least, to my best memory, four or five  
21 telephone calls from Jean Lewis. And in visiting --  
22 and those were directly to Mr. Dodson. And he would

1 come in and tell me Jean Lewis has called again and  
2 wants to know what are we going do, why aren't we  
3 issuing grand jury subpoenas. And there was no doubt  
4 and question in my mind that there was a sense of  
5 urgency -- and my judgment was that that sense of  
6 urgency and I don't recall any specific words that  
7 Mac said -- but the sense of urgency was we need to  
8 do something about this right now and we need to get  
9 a grand jury investigation going. And my judgment,  
10 it was who the witnesses were, it was not Mr.  
11 McDougal.

12 Q Now, did you talk to Jean Lewis yourself at  
13 all?

14 A Never, not to this day. As a matter of  
15 fact, I think on the last call -- and there is  
16 nothing facetious about this, I am not trying to be  
17 facetious, I am trying to tell you the exact  
18 scenario -- when he came in the last time, he said  
19 she called again. I told him before we are going to  
20 handle it in due course and blah, blah, blah.

21 I said who in the hell is Jean Lewis,  
22 because it was a very unique way in which the

1 referral had come in to that office. I personally  
2 had not experienced that type of insistence from RTC  
3 in any S&L case and I was heavily involved in S&L  
4 cases personally. It was just something about it  
5 struck me as unusual.

6 Q Now, you earlier testified that you also --  
7 you formed this opinion based on conversations  
8 Mr. Dodson had with Jean Lewis, and conversations  
9 either you or Mr. Dodson or somebody else had with  
10 the FBI; is that correct?

11 A Yes.

12 Q Who at the FBI did you have conversations  
13 with?

14 A I talked with Don Pettus. I also talked  
15 with Steve Irons, and I don't remember if Don White  
16 had ever participated or not; I don't think so. And  
17 it seems like Gretchen -- I forget Gretchen's last  
18 name, special agent in specializing documents.

19 Q Was that Gretchen Hall?

20 A Yes, that would be Gretchen Hall. And I  
21 don't recall whether we met about it -- it seemed  
22 like we met three times total before my letter of the

1 16th, but I am not real sure about that. It may have  
2 been two. But I remember looking at this once to --  
3 looking at this criminal referral once, early on, to  
4 see if there was anything in there that jumped at me  
5 that there would be a sense of urgency, that we  
6 needed to do something right now, that might be --  
7 and then I remember doing it again a second time  
8 where I sat down and really went through it in  
9 conjunction with FBI going through the records, and  
10 that was prior to the 16th.

11 Q So there was a meeting -- was it in your  
12 office -- where you reviewed this with the FBI?

13 A Yes.

14 Q And there were, I think, some 300 exhibits;  
15 is that correct, that went along with this?

16 A Right. I never looked at the box of 300  
17 exhibits. I only did my work from this referral.

18 Q Did Mr. Dodson review the exhibits?

19 A I think he did some. But he didn't do it  
20 in a manner that the FBI sent their agents over to do  
21 it because that's how we broke it down. I was going  
22 to look at this part of it. And they had document

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30

1 examiners, one of them was an accountant, I think  
2 Mr. Irons was a CPA. And they handled the 300  
3 records.

4 Q So they would review the records, and then  
5 you stuck to the referral and reviewed it?

6 A And, of course, I talked with them about  
7 the records. And the end result was that their -- my  
8 understanding was the FBI concurred with my analysis  
9 of the case and I concurred with theirs.

10 Q What was your analysis of the case? You  
11 have reviewed the referral and you discussed with  
12 them what the documents --

13 A Well, it is basically contained in my  
14 letter of October the 16th. The first analysis was  
15 that, based on this one referral, which is all I ever  
16 had and have ever seen to this day, that if there was  
17 a case that was worthy of limited or, even,  
18 investigation, the case was against Mr. McDougal,  
19 Ms. McDougal, and I believe her name was  
20 Ms. Anspaugh.

21 Q A-n-s-p-a-u-g-h; correct?

22 A I think that's right. And that I found no



1 probable cause, in my judgment, to institute a grand  
2 jury investigation against Mr. and Mrs. Clinton or  
3 any of the other witnesses at that point in time. I  
4 just didn't see in it there.

5 Q Now, with respect to the letter you just  
6 referred to, I am going to show you what's marked for  
7 identification as Bates number 007051. It is a  
8 letter dated October 16, 1992 to Don Pettus,  
9 regarding referral number C0004 from you with a  
10 copy -- cc to Mac Dodson. Is that the letter you are  
11 referring to?

12 A Yes. Yes, it is. I'm sorry.

13 Q Now, in that letter you indicate in the  
14 third paragraph that the only allegations having any  
15 credibility of possible deliberation for  
16 investigation exist against Mr. and Mrs. McDougal and  
17 Lisa Anspaugh; is that correct?

18 A That's correct.

19 Q And that was consistent with your position  
20 at that point?

21 A At that point in time, and it was taken in  
22 context with the entire letter.

1 Q Going back to the first paragraph, you also  
2 indicate in it, and I am referring to the third  
3 sentence, that "While the participation of some or  
4 all of these witnesses certainly suggests poor  
5 judgment, possible conflicts of interest or ethical  
6 infractions, proving specific intent or criminal  
7 construct would be a prosecutorial burden that could  
8 not be carried forward."

9 What poor judgment, possible conflicts of  
10 interest or ethical infractions were you referring  
11 to?

12 A Well, basically to summarize it, it  
13 appeared to me that the allegations suggested that  
14 they were borrowers that were allowed to receive  
15 loans out of Madison.

16 Q Who were borrowers?

17 A I guess -- I can't remember the specific  
18 loans or anything like that. But it would be  
19 Mr. Clinton and Ms. Clinton and maybe Mr. Tucker; I  
20 can't remember about his part of it. And I can't  
21 remember whether they were undercollateralized or  
22 whether there was no collateral. But my instinct

1 was, back at that point in time when I was working  
2 with those things, and I had worked with them --  
3 meaning S&Ls -- in three years, that they were in a  
4 possible position to receive the benefits of a good  
5 loan, a profitable loan and not the detriments of a  
6 loan gone bad. But what I saw in here, more than  
7 anything --

8 Q What do you mean by that, in a position to  
9 receive a good loan versus a loan gone bad? What do  
10 you mean by that?

11 A Well, my instinct was that, at most, what  
12 they could have been accused of was based upon this  
13 referral alone, was the fact that there appeared to  
14 be -- and again, I would have to analyze the referral  
15 again, and try to go back to what I was thinking at  
16 that point in time -- but that they were like a lot  
17 of borrowers that we never prosecuted in Arkansas,  
18 that the insider permitted them to have loans, and  
19 those loans would not necessarily cost them money out  
20 of their pocket if they were unprofitable. But I  
21 don't recall seeing anything in the referral that was  
22 a tangible document or witness to anyone that says

1 these people have knowingly participated in a  
2 criminal fraud on this institution. I saw things  
3 that suggested to me that if anybody had perpetrated  
4 a fraud on the institution it was Mr. McDougal,  
5 Ms. McDougal and Ms. Anspaugh.

6 MR. BEN-VENISTE: For purposes of this  
7 record, you haven't made a distinction between the  
8 Clintons and Governor Tucker in connection with the  
9 generalization that you have made about Arkansas  
10 procedure as it may or may not apply to this  
11 particular referral. And I wanted to make that clear  
12 on the record because, as you may know, this record  
13 may well become public. So generalizations that  
14 might be appropriate and accurate as discussions  
15 among lawyers take on or can potentially take on a  
16 different connotation in a cold transcript that is  
17 read after the fact.

18 So, my suggestion would be that if there  
19 are distinctions to be made, and you ought to make  
20 them, and that, if you are speaking generally from  
21 your experience as compared with speaking from this  
22 referral and supporting documentation that you have

1 seen, you ought to point that out.

2 THE WITNESS: Well, having said that, I am  
3 not trying to make a distinction for any of the  
4 witnesses. That was my feeling about the witnesses  
5 that were included in the referral.

6 BY MR. GICALE:

7 Q Okay, and when you talk about loans that  
8 they may have received that would be unprofitable,  
9 give me an example of what you remember.

10 A Well, I don't --

11 MR. BEN-VENISTE: I am not sure he can  
12 answer the question.

13 THE WITNESS: I don't know that I can.

14 BY MR. GICALE:

15 Q When you say "an unprofitable loan," you  
16 mean a loan, for instance, an investment in real  
17 estate where the real estate ultimately is not of  
18 sufficient value to pay off the loan; is that an  
19 example of an unprofitable loan?

20 A Sure, a loan that can't be collected by the  
21 institution.

22 Q Now you also said in that letter that "In

1 due time," and I am referring to page 2 of that  
2 exhibit, second-to-last paragraph, "In due time, I  
3 will be happy to meet with you to discuss a limited  
4 examination and the possibility of proving some of  
5 the allegations regarding Mr. and Mrs. McDougal and  
6 Ms. Anspaugh"; correct?

7 A Right.

8 Q And that's consistent with what your  
9 position was at that point in time?

10 A What I was trying to say in that letter to  
11 the FBI is this: When the election is over, if we  
12 still want to pursue this particular aspect of the  
13 referral, or this referral as it relates to the  
14 people that I see here that have done something  
15 wrong, then certainly we will do that or we will  
16 discuss it and see what's going to happen about it.

17 Q Did you believe then, with respect to Mr.  
18 and Mrs. McDougal and Lisa Anspaugh, that there was a  
19 potential case to be made against them?

20 A I believe that there was a possibility that  
21 we could make a case. But I also had reservations  
22 about the wisdom and the use of resources to make

1 that case, and I certainly had reservations about  
2 trying to do it before the election. But  
3 Mr. McDougal had been prosecuted once and he had been  
4 successful. That was the one S&L case we lost. And  
5 Mr. McDougal had had what was publicly known at that  
6 point in time as some serious mental problems. I  
7 don't know if he had a mental breakdown or was  
8 diagnosed as a manic-depressive, but he was  
9 destitute, living in a mobile home, a borrowed mobile  
10 home behind someone's house.

11 And there were indications that I discussed  
12 with the FBI, look, we've got Savers, we've got First  
13 Federal, we've got some very other serious cases and  
14 we need to sit down and seriously determine whether  
15 or not this case is going to be worthy of  
16 reprosecuting again.

17 Also, I was considering the aspect that  
18 when he had been prosecuted in 1990, there were  
19 public statements which Mr. McDougal made saying that  
20 the prosecution was political and they were false.  
21 But at the same time, I did not want to take the  
22 Department of Justice or that office back down -- or

1 at least I wanted to seriously consider whether we  
2 would do that by going back that road and prosecute  
3 that case again.

4 Q So while you were saying there may be a  
5 case to be made here, it was a question of  
6 priorities, the priorities were a concern to you; is  
7 that correct?

8 A A question of not only priorities, but a  
9 question of proof.

10 Q Right.

11 A I mean, we -- and I think the FBI concurred  
12 with me on this, that we needed to be sure that we  
13 had proof that was substantial and knew that we  
14 weren't just replowing the same ground.

15 Q Now, when the case first came in, did you  
16 refer to it as a hot potato?

17 A Well, sure.

18 Q Why did you consider it that?

19 A Well, again, because of the implicit thing  
20 that was in every conversation about it, as to who  
21 the witnesses were, and particularly that you had a  
22 candidate for President of the United States, and the

1 governor of Arkansas and his wife involved in it, and  
2 it was a very close to the national election.

3 Q Now, you indicated that you and Mac Dodson  
4 and Sandra Cherry reviewed the referral?

5 A I don't know whether she reviewed the  
6 referral or he just talked to her about the referral.

7 Q Now, who was Sandra Cherry, did she  
8 prosecute Mr. McDougal before?

9 A Yes, I don't know whether she was lead  
10 counsel or second chair, but she was -- she  
11 participated in the prosecution along with Ken Stoll.

12 Q Was she asked to make a determination as to  
13 whether these allegations in criminal referral C0004  
14 were new compared to the ones that she had assisted  
15 with in the prosecution of McDougal for in 1989?

16 A I think that's what she asked, yes.

17 Q Anything -- and she determined that these  
18 indeed were new --

19 A I don't know how many. Yes, certainly a  
20 number were new.

21 MR. SGRO: Could we take a break for a few  
22 minutes.

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1 MR. GICALE: Okay.

2 (Recess.)

3 BY MR. GICALE:

4 Q Now, in your discussions, Mr. Banks, with  
5 the FBI, did you tell them that a complete and  
6 factual determination of what transpired with respect  
7 to this referral would take some time?

8 A I don't recall using those exact words,  
9 no. I mean, what I recall discussing with the FBI  
10 was, what do we have here on our hands now, where is  
11 the merit in prosecuting Mr. McDougal, and should we  
12 do anything with this referral prior to the  
13 election. That's generally the content of what I  
14 discussed with them.

15 Q Did you tell them that you had to do any  
16 legal research or an analysis along with the referral  
17 at some point?

18 A We did. I already told you that we did  
19 that before the 16th, they sent two agents over. We  
20 tried to do a good analysis of whatever we had on  
21 hand early on rather than just -- like I told you, I  
22 wasn't going to do anything during that three-week



1 period. And I wasn't going to do anything with it  
2 until after the election.

3 But we would go on and decide whether we  
4 would do something with it now, sit down and take a  
5 look at it and see if we had anything on our hands  
6 that merited getting the grand jury going with it  
7 right then.

8 Q Now, again, after you finished that review,  
9 you determined that you would come back to it at some  
10 point in time. "In due time" I think was the quote  
11 in your letter; correct?

12 A What I am saying to you is this: I was not  
13 declining that referral at that point in time prior  
14 to the national election. What I was doing, and what  
15 I was saying in my letter of October the 16th, I will  
16 not participate in any shape, form or fashion of  
17 investigation that involves the grand jury trying to  
18 get subpoenas out because it would invariably would  
19 get to the media.

20 But after the election -- please let me  
21 finish -- after the election, if we wanted to do a  
22 limited investigation, if the FBI still felt like it

1 was worthy, if I heard something from the Department  
2 of Justice that we needed to go forward with it right  
3 then after the election, yes, we would have gone and  
4 done some 302s and tried to do something. But I had  
5 some serious reservations as to whether that would  
6 actually ever take place.

7 Q Now, did you have any discussions after you  
8 received this referral -- strike that.

9 After you received this referral in  
10 September 1992, did you have any discussions with  
11 anybody in the Department of Justice with respect to  
12 criminal referral C0004?

13 A Not before, not after, not till -- as we  
14 sit here today. Now, Mr. Dodson did talk to -- I was  
15 aware that he talked to, because I told him to,  
16 Ms. Henneman and he sent her a letter and sent a  
17 referral. And then I don't know whether he or my  
18 secretary sent a copy of my letter of October the  
19 16th. And we received, to my knowledge, no response,  
20 and I had no conversation with anybody from the  
21 Department of Justice, about this case, which I  
22 thought was unusual.

1 Q Now, there are some phone call records for  
2 September 4th, September 8th and September 9th, 1992  
3 of Mr. Keeney, who was head of criminal -- excuse me,  
4 at that point in time was a deputy to Mr. Mueller in  
5 the criminal division?

6 A Mr. Who?

7 Q Keeney.

8 A I guess that's right. Are you saying  
9 Keating?

10 Q Keeney, John Keeney.

11 A I would assume so. I just don't recall.

12 Q Well, those phone call records indicate  
13 that you talked to him during that time period on  
14 those dates, September 4, September 8 and September  
15 9th of 1992.

16 A No --

17 MR. BEN-VENISTE: Excuse me, I don't see  
18 where those records indicate that Mr. Banks talked to  
19 anybody.

20 MR. GICALE: I'm sorry. The phone call  
21 records indicate that your name is on his call  
22 sheets. And I am just telling you that the phone

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1 call records indicate that.

2 MR. BEN-VENISTE: They don't indicate that  
3 anybody talked to anybody. There is a notation with  
4 some phone numbers.

5 MR. GICALE: Let me ask the question.

6 BY MR. GICALE:

7 Q There are phone records that have your name  
8 on them for those dates?

9 A From my office.

10 Q Your name on them, U.S. Attorney Banks, for  
11 those dates?

12 A I don't have the slightest recollection of  
13 talking to that gentleman.

14 MR. SGRO: I think he is unclear. They are  
15 not your phone records. He is saying they're  
16 Keeney's phone records.

17 MR. BEN-VENISTE: Number two, the  
18 indication is, on two of them, that there was not any  
19 conversation.

20 MR. GICALE: Well, that's two.

21 BY MR. GICALE:

22 Q Did you call John Keeney, September 4th,

1 September 8th or September 9th, 1992?

2 A No.

3 Q Did you discuss a criminal report with John  
4 Keeney?

5 A No, I don't have the -- and I certainly  
6 believe I would remember that. I don't know what  
7 documents you are referring to, but would that same  
8 telephone number be the one for Mac, could Mac have  
9 talked to him?

10 Q I am going to show you what's marked for  
11 identification as 184 and then there is a  
12 501-324-5342 number. Is that your phone number?

13 A I think that was it. I believe that was  
14 right.

15 Q That was yours as opposed to Mr. Dodson?

16 A I think so. I don't remember what my  
17 telephone number was, but I believe that's it. But I  
18 have absolutely no recollection whatsoever, I do not  
19 believe I ever talked to that gentleman, in any  
20 capacity.

21 MR. BEN-VENISTE: Well, there is a  
22 reflection on the document there with the letters WCB

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1 which, in my experience, means will call back, which  
2 would reflect that there was a conversation.

3 THE WITNESS: What does he say?

4 MR. GICALE: For the time being I need to  
5 ask you the questions.

6 BY MR. GICALE:

7 Q I am going to show you another document  
8 dated September 8, 1992, document number 183. This  
9 also has your name on it with the phone number  
10 501-324-5347.

11 A Now that's my number, I think. That was my  
12 number. Lord, I can't remember. I apologize. I  
13 can't remember what my telephone number was. But  
14 what I am telling you is you can show me any document  
15 you want to. I do not have any recollection, and it  
16 is my testimony that I talked to no one, not then,  
17 not after the election, and not before leaving  
18 office, about this referral or this case or any of  
19 the parties involved in it.

20 Q No one at the Department of Justice?

21 A Right. I didn't talk with anybody about it  
22 other than Mac Dodson. Within the office, excuse me,

1 and the FBI.

2 MR. BEN-VENISTE: So that the record is  
3 complete on the document you just showed the witness,  
4 that also has a notation WCB.

5 MR. GICALE: I think I pointed that out.

6 MR. BEN-VENISTE: No.

7 MR. GICALE: Yes. But if I did not point  
8 it out, that has that as well; that's correct.

9 BY MR. GICALE:

10 Q I am going to show you what's marked for  
11 identification as document number 1885. This is a  
12 phone log of Mr. Keeney dated September 9th. And  
13 your name and a time in the left-hand side, I  
14 believe --

15 A Again, like the other documents that you  
16 showed me, Mr. Keeney's records, I would have no way  
17 of knowing what he was keeping, and all I know is  
18 that's my name up there. And I did not talk to  
19 Mr. Keeney. I mean, you would have to give me  
20 something to tell me that I did. I just don't -- I  
21 don't have any recollection. And I can assure you if  
22 I talked with him that many times I would have

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1 remembered that. I am getting old, but I am not that  
2 old.

3 Q Now, I will show you what's marked for  
4 identification as document number 17458. This is  
5 a --

6 MR. GICALE: Off the record for a second.  
7 (Discussion off the record.)

8 BY MR. GICALE:

9 Q This is a document dated October 7, 1992  
10 from Lawrence McWhorter, and attached to it is  
11 another document from Mr. McWhorter to Mr. Barr,  
12 Mr. Terwilliger and Mr. Budd, regarding this criminal  
13 referral. Are you familiar with this document? Did  
14 you see this?

15 A I have never seen this document before.

16 Q Now, you indicate --

17 A That's consistent, though, with -- we sent  
18 that information up there on the 6th, or the 5th.

19 Q When you say you sent it up on the 5th or  
20 6th, again, that was Mr. Dodson who went it up?

21 A Yes.

22 Q Would he have talked to Mr. McWhorter or

1 somebody from Mr. McWhorter's office?

2 A He may have. I don't remember him saying  
3 he ever talked with Mr. McWhorter. I thought -- my  
4 only recollection is that he talked with  
5 Ms. Henneman, Donna Henneman.

6 Q In the synopsis section of that document,  
7 it indicates in that full paragraph there, that  
8 second sentence, that it is the belief of the United  
9 States Attorney's Office that further investigation  
10 into this matter is warranted.

11 A Well, since I never talked to him, and I  
12 don't know what Mac said, that's his language.

13 Q Well, is that consistent with what your  
14 position was that the point?

15 A As I've previously told you -- let me see  
16 if I can explain it this way, maybe make it a little  
17 more clear. I was not trying to submarine that  
18 referral, period, end of sentence. I was trying to  
19 slow the referral down and to isolate who in that  
20 referral, in my judgment, had committed crimes that  
21 were -- or committed allegations that were worthy of  
22 grand jury investigation.

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1 And the McDougals were the primary persons  
2 that I saw involved. There was no doubt that the  
3 department, after I sent them this information and  
4 had the FBI heard that after the election, they  
5 wanted to start up and take a look, as I explained,  
6 of what we had discussed for -- on two or three  
7 occasions, yes. But this language seems to imply  
8 that we need to do something right then and that is  
9 not accurate. That is not consistent with my  
10 position.

11 Q Well, did you believe at that time that  
12 further investigation was warranted?

13 MR. BEN-VENISTE: Excuse me, I have to  
14 object. You have asked the same question two or  
15 three times up to this point, and I object to you  
16 continuing to take up our time with redundant  
17 questions. The witness has been asked a question, he  
18 has responded at least two or three times to the  
19 effect that he thought that the matter warranted a  
20 further look, but that he was unwilling to institute  
21 a grand jury proceeding prior to the election.

22 Now, I don't know how many different ways



1 he can give you the same answer.

2 MR. GICALE: I note your objection and I  
3 would like an answer.

4 THE WITNESS: Okay. My answer again, and I  
5 am trying to be consistent with what I have said  
6 earlier and what my position was then, after the  
7 election, and with the referrals having gone to  
8 Washington and had the FBI wanted to come back in and  
9 had we all said, hey, this has a sense of urgency now  
10 again right after the election, I certainly would  
11 have begun to take a limited look at it. It would  
12 not have been on my list of top priorities to do the  
13 day after the election.

14 It did not have the burning sense of  
15 urgency that it seemed to have had then at that point  
16 in time by RTC and what it seems to have today, but I  
17 was not going to submarine the investigation at all.

18 But you've got to also remember this:  
19 Please understand that after the election until  
20 sometime in January, not one peep was heard about  
21 this referral, not one iota, not from Justice, not  
22 from the FBI, which suggested to me that suddenly

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1 that there was not the same sense of urgency after  
2 November 3rd, 1992, that apparently there seemed to  
3 have been or was trying to be prior to that date.

4 Am I communicating with you clearly? Am I  
5 not making good sense?

6 BY MR. GICALE:

7 Q I heard what you just said.

8 Now, with respect to the information that  
9 was conveyed to the executive office, you did not  
10 talk to Mr. McWhorter, you said Mr. Dodson did, you  
11 believe?

12 A I don't know. He may have is what I said.

13 Q Now, at that time, there was an individual  
14 in the executive office by the name of Wayne Rich; is  
15 that correct? Did you talk to him about it, this  
16 referral?

17 A I may have. I don't remember. I don't  
18 really remember.

19 Q Did Mr. Dodson talk to --

20 A He might have. I know Wayne was the  
21 person, if I talked to anybody about how do you  
22 proceed, procedural, who do you need to get this to

1 or things like that, that is the person I normally  
2 would call because Wayne was very, very helpful. I  
3 don't remember talking to Wayne.

4 Q What was the purpose of notifying the  
5 Executive Office at this point in time, in early  
6 October of 1992?

7 A Well, twofold: Mac had come back from a  
8 seminar, Mr. Dodson had, in which they had once again  
9 announced that if you have hot button or hot potato  
10 issues, we would like to know about them and here is  
11 the woman's name. And so I was trying to comply with  
12 the department procedures.

13 But secondly, my sense of the sense of  
14 unusual urgency and the sense of pressure that  
15 something had to be done before October the 16th, I  
16 made up my mind that, hey, this needs to go on up  
17 there now. And I told Mr. Dodson let's go on, send  
18 this up there, let this woman know what's going on  
19 and we will see what we hear.

20 Q Who said that something had to be done  
21 before October 16?

22 A Well, my recollection is that at least the

1 second meeting or maybe the last meeting, I thought  
2 we had analyzed the case and I thought we had had a  
3 clear communication about how we were going to handle  
4 it, and that we would do nothing that involved the  
5 grand jury until after the election.

6 Then, there was this directive or policy  
7 decision that had come through the FBI to me, I think  
8 Don came back over and says my people in Washington  
9 say I have to have this by October the 16th. And  
10 that is when I wrote the letter of the 16th which  
11 basically was saying -- let me make this record  
12 perfectly clear -- this is what I am not going to  
13 do.

14 Q Now, when you referred to Don, you are  
15 talking about Don Pettus?

16 A Yes. I'm sorry, I'm sorry.

17 Q Are you saying that you were informed of  
18 the October 16th deadline from Mr. Pettus of the FBI?

19 A Either he or Mr. Irons, one of the two that  
20 had participated in the meetings.

21 Q But in any event, it was from the FBI, not  
22 from the Department of -- not from main Justice?

1       A    That's right. Which I also -- you know,  
2 that struck me as being a little different. Because  
3 by the 16th they had had this for what, a week or so,  
4 and if FBI in Washington was giving directives to FBI  
5 Little Rock that we had do something and we had to  
6 have something done, the communication that was  
7 coming to me, this has got to be done now, you have  
8 got to do something now, otherwise never would I have  
9 written a letter as strongly worded as I did my  
10 letter of October 16th.

11       I was trying to say in my own way if  
12 somebody is going to take this to the grand jury and  
13 start this investigation based upon this referral I  
14 have in hand before this national election, I am not  
15 going to be a party to it, period, end of sentence, I  
16 am not going to do it. I don't know how or why it is  
17 coming this way. I don't know how or why the  
18 Department of Justice is dead silent on it, but I  
19 know what Chuck Banks, as United States Attorney and  
20 as a pending federal judge nominee in the Senate, is  
21 or is not going to do. I'm sorry, but that's just  
22 the way it was.

1       Q    But with respect to that, now, you felt  
2 concerned about it, that it was a hot potato issue,  
3 is I think how you described it, and I asked you  
4 earlier whether or not you had said something to that  
5 effect earlier. Can you tell us why, inasmuch as you  
6 received this in September, early September 1992, you  
7 waited until October 5th or 6th to let the Department  
8 of Justice know about it?

9       A    Well, first off, when I sat down and looked  
10 at it, my confidence in the referral itself was not  
11 100 percent, that it was something that could even be  
12 taken to a grand jury, or proved in a court of law.  
13 We would have to analyze those allegations  
14 carefully. So as I have told you before, I was  
15 not -- it was not my custom or habit to immediately  
16 call or write or send notes to the Department of  
17 Justice that I have a hot potato.

18       So I intended to do nothing with it until I  
19 heard something else, saw something else, or there  
20 was something that prompted me to do a grand jury  
21 investigation, or a pre-grand jury analysis until  
22 after the election. I mean, that was -- that was

1 intentional my part.

2 But --

3 Q What changed --

4 A -- what changed my mind was that Jean Lewis  
5 continued to pressure our office. That was number  
6 one. And then number two, the momentum began to  
7 change from what the FBI was saying that they had to  
8 do, that they had to do something and it had to be  
9 done by such and such a date. So by the 1st of  
10 October I said, look, we are going to have to do  
11 something with this. We are not going to be able to  
12 put it in a normal course of events.

13 And also, remember this, too: While people  
14 now in retrospect act like there appeared a time  
15 between September and October to pick up a referral  
16 and start something, that -- except for the fact of  
17 who these people were, that was real fast. I mean,  
18 referrals were -- I mean, a lot of times it took six  
19 months to get a case up and started and get  
20 meaningful proof going in a S&L case. I mean, you  
21 know that from your experience.

22 Q Right, but who these people were obviously

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1 made this a slightly different referral; correct?

2 A Obviously who these people were, and again,  
3 except for the witnesses, there would have been no  
4 hot potato to it.

5 Q So, it was a hot potato when it came in in  
6 early September, it was a hot potato in early  
7 October?

8 A And it's a hot potato as we sit here today,  
9 it seems to me.

10 Q Were you told by the FBI that they were  
11 instructed to conduct a limited investigation with  
12 respect to this matter?

13 A No, I don't remember those words being  
14 used. Here is my impression of what had happened:  
15 We had done a preliminary analysis. It was unusual  
16 for Don Pettus to participate, to come to my office  
17 and participate. That was not customary for him and  
18 in any individual investigation he may have done it  
19 more than I recall, but I remember Don was personally  
20 involved in that one.

21 I thought that we had agreed that this was  
22 the prudent, proper, and ethical manner in which to

1 handle this referral. I thought we had agreed to  
2 that in late September, maybe, or middle September,  
3 when we first started saying okay, we need to take a  
4 look at this. And then, seems like the next thing,  
5 we had the records analyzed, we concurred that if  
6 there were targets in that referral, it was the  
7 McDougals, that there was not sufficient proof to  
8 justify a grand jury investigation against the  
9 witnesses, or the allegation where is not  
10 sufficiently documented or founded.

11 And then all of a sudden, it -- Jean Lewis  
12 called another three or four times, seemed like, and  
13 then Don comes back, and it was my distinct  
14 impression that he had received directives from FBI  
15 Washington. And this was after I had sent the  
16 materials up to the Department of Justice, it was my  
17 distinct impression that I had to have something done  
18 and something had to be done on this by October the  
19 16th.

20 Now whether I misunderstood his  
21 communication, I don't know. I don't think that I  
22 did but I know what my sense of it was. And --

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1 because that's when I said, I don't care what Don's  
2 directive is, I've heard nothing from the Department  
3 of Justice that tells me I need to be doing this, and  
4 I am not going to respond to any pressure that he may  
5 be getting from FBI in Washington. And I am not -- I  
6 am still not going to start with the grand jury. I  
7 am not going to do anything until after the election and  
8 then we will look at it again.

9 Q Did he tell you his instructions were to  
10 protect the identities of passive investor or  
11 witness, that his office in Little Rock should not  
12 conduct any overt investigations such as witness  
13 interviews or serving of grand jury subpoenas at that  
14 time?

15 A I don't remember him using those words, but  
16 that was my impression, that he agreed, a couple of  
17 weeks earlier or after our first meeting, that that  
18 was the way we should handle it. We should not do  
19 anything until after the election. And then there  
20 was a change; it seemed like there was something  
21 more -- to do something, I don't remember exactly  
22 what it was, he had to have something and he had to



1 have it by the 16th because I referred to it in my  
2 letter.

3 Q There was a change in terms of the date,  
4 but there was a change in terms of what Washington  
5 was telling him with respect to witness interviews  
6 and serving subpoenas?

7 A I don't know what Washington told him, I  
8 was not privy to those meetings. I can't remember  
9 exact words said. I am trying to recollect for you  
10 my perception of the conversations that were going on  
11 and the needs that the FBI seemed to have or wanted  
12 at that point in time.

13 Q Do you know whether or not FBI  
14 representatives met with individuals from the  
15 Department of Justice, including, but not limited to,  
16 Messrs. Mueller and Raphaelson in the Department of  
17 Justice?

18 A Number one, I didn't know that and I don't  
19 know that other than by hearsay. I read something in  
20 the paper or someone said something to me, but I have  
21 now learned they had some kind of meeting during this  
22 time frame, which would have surprised me had they

1 not. But what was even more surprising to me was if  
2 they were meeting in Washington about this, why was I  
3 not being given some directive or some contact saying  
4 you don't do this or you've got to do that.

5 You've got to remember, it seems to me  
6 implausible to suggest that they were going to let  
7 me, on my own initiative, without DOJ directive,  
8 commence an investigation of a Presidential candidate  
9 or, later, of the President of the United States  
10 without guidance or oversight from the Department of  
11 Justice. I mean, I can't imagine they were going to  
12 let me indict the President down in Little Rock on my  
13 own.

14 Q Well, did you seek any guidance from the  
15 Department of Justice with respect to how to proceed  
16 with respect to this criminal referral?

17 A No. What I did was what you know, I sent  
18 the documents in there, I assumed that I would --  
19 if -- and here is what I told the FBI. I said my  
20 assumption was, when they interviewed me, I said my  
21 assumption was that once we've sent that in there,  
22 given the timing of when it went in and given the

1 contents of what the referral said and what my  
2 October 16th letter said, that if the department felt  
3 there was merit to the investigation, and especially  
4 merit as to that point in time of doing something  
5 right then involving Mr. and Mrs. Clinton and  
6 Mr. Tucker and the other witnesses, the roof would  
7 have come off the Department of Justice. I'd have  
8 heard something, I didn't hear anything. Then I  
9 didn't hear anything afterwards.

10 Q During that period of time, Mr. McWhorter  
11 left the Executive Office of the U.S. Attorneys and  
12 Mr. Moscato came into the office, do you recall that?

13 A I recall talking to him one time, I think,  
14 congratulatory when he came in, introducing myself.

15 Q Did you talk to him about this,  
16 Mr. Moscato?

17 A I don't believe so. I don't recall  
18 anything about that.

19 Q Do you recall, at this point in time,  
20 Douglas Frazier was working sometimes in the  
21 Executive Office and at later point, I think, in the  
22 Deputy Attorney General's office?

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1 A Who?

2 Q Doug Frazier.

3 A I'm sorry, I am drawing a blank on that  
4 gentleman. I don't recall who that is.

5 Q And you don't recall -- do you recall  
6 having any conversations with a Douglas Frazier from  
7 the Deputy Attorney General's office, main Justice?

8 A No.

9 Q Mr. Mueller or Mr. Raphaelson, did you talk  
10 to them about this referral, C0004?

11 A No, I know I didn't talk to them for sure.  
12 I don't recall talking to anybody -- I don't recall  
13 talking to anyone within main Justice about the  
14 referrals, when it got there, how to handle it, what  
15 to do with it, what not to do with it, or anything as  
16 to the substance.

17 Q Now, you believe that the notice, which you  
18 were just reviewing, document number 17458, dated  
19 October 7, from Mr. McWhorter, you believe that that  
20 was -- that basically put this in place in terms of  
21 the Department of Justice and its decisionmaking and  
22 alerted them to this and if they wanted you to do

1 something, that was the document that alerted them to  
2 the matter and would prompt them to get back to you?

3 A Well, again, I was relying as much as  
4 anything on the information that Mr. Dodson had given  
5 me, that that was the appropriate person and the  
6 appropriate way to refer those. So unless there was  
7 a breakdown in communication within the Department of  
8 Justice, yes, I would assume that that was what was  
9 necessary to let the appropriate official within the  
10 Department of Justice know that I have an unusual  
11 referral in my possession down here in Arkansas. And  
12 again, what was unusual about it is, if it had just  
13 been Mr. and Mrs. McDougal alone, I would never even  
14 have referred -- I mean, I would never have even sent  
15 it up there.

16 Q Would it be safe to say that you were not  
17 just sending this for information purposes, you were  
18 also sending it for decisionmaking purposes; is that  
19 what you are saying, the notice to the Executive  
20 Office?

21 A Well, I suppose that's it partially, but  
22 for information, number one, to alert them that

1 here's this referral; and number two, how about some  
2 guidance, do you want to get involved in this, do you  
3 want to take this away, do you want to direct me to  
4 do something or not do something. Here is the letter  
5 telling you -- I thought that was pretty -- the  
6 October 16th letter was pretty much a blunt way of  
7 saying, here is what I am not doing down here. And  
8 you guys up there in D.C., if you want to do  
9 something different, you need to order me do it or  
10 come down and do it if you want it done right now. I  
11 am just not going to do that.

12 Q So you felt that that notice to the  
13 Executive Office was an adequate way of notifying the  
14 people in the Attorney General's office and the  
15 Deputy Attorney General's office that this matter was  
16 pending and you wanted their input; would that be  
17 correct?

18 A That's what I thought.

19 MR. SGRO: I think he also referenced the  
20 10/16 letter to Pettus.

21 THE WITNESS: Maybe I didn't understand  
22 your question. The whole referral was sent -- the

1 cover letter of October 6 was sent and my letter of  
2 October the 16th was sent.

3 BY MR. GICALE:

4 Q Well, but, to be fair, the letter of  
5 October 16th stated that in due time you would be  
6 happy to meet with officials to discuss the limited  
7 examination --

8 A That was the letter to the FBI. Yes, I  
9 would have been happy to meet with anybody. I am not  
10 trying to be impertinent or rude, but to be fair, if  
11 they were already meeting with FBI about it, if that  
12 in fact was the case, officials from DOJ, what more  
13 did they need than what I was sending?

14 Q How did you know that they were meeting?

15 A I didn't until now, just since this  
16 started. I didn't know when I left the United States  
17 Attorney's office, I had to assume that surely to  
18 goodness the FBI or RTC or somebody was talking to  
19 somebody over at DOJ about the nature of this  
20 referral. I just couldn't imagine that Jean Lewis  
21 would take it upon herself to demand, in the manner  
22 that was going on, that this grand jury be instituted

1 right then. It just did then and still now strikes  
2 me as -- just didn't strike me as being a normal way  
3 to process a referral.

4 Q Well, at that point in time, Ira Raphaelson  
5 was in charge of the prosecution of the S&L cases; is  
6 that correct?

7 A Yes, I believe that's right, yes.

8 Q Did you know Mr. Raphaelson?

9 A Yes, I knew him. Not that we were personal  
10 friends.

11 Q Had you ever talked to Mr. Raphaelson on  
12 the phone about S&L prosecutions in other cases?

13 A I don't believe I ever talked to him about  
14 it. I mean, just so you will understand -- this  
15 might not be to my advantage.

16 What I did was I tried to be a hands-on  
17 U.S. Attorney throughout my whole tenure. I tried  
18 not to raise issues with the Department of Justice or  
19 bother people within the Department of Justice unless  
20 I was sure that I felt like that it was something  
21 that they needed to be involved in and they didn't  
22 know about it.

1 I felt like they needed to know about this,  
2 but I frankly have to be 100 percent honest with you  
3 about what was going on in my mind at that point in  
4 time. I was real curious as to whether, after the  
5 election, given what we had sent to them, given the  
6 incessant communication of RTC, whether I would ever  
7 hear another word about it. And that was going to  
8 suggest to me whether or not there was merit to these  
9 allegations, and I didn't hear anything. But as far  
10 as did I get on a plane or come up here and meet with  
11 Ira or get on the phone and call, no, I did not.

12 Q What about Mr. Terwilliger? Did you talk  
13 to him? He was the deputy --

14 A No.

15 Q Or Mr. Barr, the Attorney General --

16 A No.

17 Q -- about this referral?

18 A No, I did not.

19 Q Now, so that the record is straight, at  
20 this point in time when you say they had this  
21 information in front of them, what they had in front  
22 of them in October would have been the information

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1 conveyed to them by Mac Dodson which is included in  
2 this report identified as 17458; correct?

3 MR. BEN-VENISTE: I object to the  
4 redundancy of this. I can't believe that you  
5 continue to ask whether the material that was sent to  
6 the Department of Justice was received by the  
7 Department of Justice in six different ways.

8 THE WITNESS: Yes.

9 BY MR. GICALE:

10 Q Is that the answer, yes?

11 A Wait a minute. No, that's not the answer.  
12 Would you read the question back.

13 (The reporter read the record as requested.)

14 Well, yes. With this further explanation,  
15 you hand me this document. What I'm telling you, the  
16 same thing I told you before, they had a letter of  
17 the 6th, they had the referral itself, they had my  
18 letter of October the 16th. And now, I am led to  
19 believe that they had whatever information they had  
20 gained from the FBI or RTC. I am not privy to that.

21 Q Okay, and the letter of the 6th is the one  
22 that we have not received.



1 A And I don't know why you've not received  
2 it. I turned it over, I mean, you know -- I  
3 didn't --

4 Q And you didn't think this was a serious  
5 enough matter to call Mr. Terwilliger or Mr. Barr  
6 about?

7 MR. BEN-VENISTE: I object; argumentative.  
8 I mean, at this point, you've asked the witness  
9 several different ways what he did and why he did  
10 it. This is an argumentative question, and it is  
11 objectionable.

12 MR. GICALE: I note the objection.

13 THE WITNESS: Certainly I thought it was  
14 serious. But I also thought that, given the  
15 information that they had at hand, that if it merited  
16 that type of urgency, that I would hear something  
17 from Department of Justice officials. There was not  
18 a game of cat and mouse, and as I am told, I didn't  
19 read this, that Mr. Barr said something was being  
20 withheld from him, it was not being done in  
21 Arkansas.

22 BY MR. GICALE:

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1 Q Now, do you know whether Mr. Dodson talked  
2 to any of the people that I asked you about earlier?  
3 And I will go over the names. Mr. McWhorter?

4 A I just don't know, but he may have talked  
5 to Larry McWhorter. He may have. I just don't  
6 remember that.

7 Q Do you know -- and this is all with respect  
8 to this criminal referral. Mr. Rich, did Mr. Dodson  
9 talk to him about it?

10 A I don't know.

11 Q Mr. Moscato?

12 A I don't know.

13 Q Mr. Frazier?

14 A Who?

15 Q Doug Frazier.

16 A I don't know.

17 MR. BEN-VENISTE: You have asked these  
18 questions already once before.

19 BY MR. GICALE:

20 Q Not with respect to Mr. Dodson.  
21 Mr. Frazier?

22 A I just told you I don't know.

1 Q Okay. Mr. Mueller?

2 A No, I don't think he -- I am sure he didn't  
3 talk to him.

4 Q Mr. Raphaelson?

5 A No, I am sure he didn't talk with him.

6 Q Mr. Terwilliger?

7 A No, I feel reasonably sure he didn't talk  
8 to him.

9 Q Or Mr. Barr?

10 A No, I don't think he talked to Mr. Barr. I  
11 believe he would have told me if he talked to those  
12 last four or five individuals.

13 Q Do you know if he talked to anyone else at  
14 the Department of Justice about this referral, main  
15 Justice in Washington?

16 A I don't believe so. I believe that the  
17 only persons he actually talked to was Jean Lewis and  
18 to Ms. Henneman, that's my recollection in my  
19 conversations with Mr. Dodson.

20 Q Now, what is your understanding of what  
21 happened to the referral within the Department of  
22 Justice after you forwarded this information to him?

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1 A I don't have an understanding of what  
2 happened to it. I don't know what happened to it.

3 Q Earlier you testified to the fact that at  
4 the time that this information came in, in September  
5 and October of 1992, that you had been nominated for  
6 a federal judgeship by President Bush; is that  
7 correct?

8 A That's correct.

9 Q Now, how did that impact on your  
10 decisionmaking, and why did you raise that in terms  
11 of your answer?

12 A Well, first off, I forgot to put it in my  
13 letter of the 27th, and I think I should have put it  
14 in there because it was on my mind, but how did it  
15 affect and impact? Well, I worked all my life to  
16 build a reputation based upon integrity and honesty  
17 and good character. I think that I was nominated to  
18 be a federal judge, not just on political  
19 partisanship.

20 And it seemed to me that, under the  
21 circumstances, I not only had my oath of office as  
22 United States Attorney to do the right thing and not

1 a political thing, but I also had the fact that I was  
 2 a nominee pending in the Senate. And it seemed to me  
 3 I should behave as a nonpartisan judge in the matter  
 4 and try to do what was right. And in finality, it  
 5 seemed to me that if you had pursued that  
 6 investigation, given those circumstances of that one  
 7 referral, there was no way that you didn't have a  
 8 conflict of interest of doing the wrong thing.

9 If President Bush had won in November and  
 10 those matters had been leaked to the media and been  
 11 made public information without any more basis and  
 12 proof than what I had, then it seems to me that would  
 13 be perceived as punishing your political opponents.  
 14 And if President Clinton, which he did win, and I had  
 15 done the same thing, it would seem to me that it  
 16 would be misuse of government power to try to punish  
 17 your political opponents or somehow affect the will  
 18 of the American people.

19 You've got to remember something else that  
 20 had happened during that time frame. It seemed like  
 21 in August or September of that year there had been  
 22 something that had gone on about searching

1 Mr. Clinton's documents at the State Department by  
 2 some employee for some type of adverse facts that  
 3 would influence the election.

4 You've got to understand, I felt terribly  
 5 uncomfortable with this situation that had landed in  
 6 my lap. I didn't feel I needed to run and start  
 7 doing anything more than what I was doing. I did not  
 8 need to start trying to create any type of public  
 9 attention to this, that it needed to be handled very  
 10 quietlike, very circumspectly within the department  
 11 and within that office. That's why I did not assign  
 12 it out to a lawyer; Mac Dodson and I handled it.

13 I wanted to be sure there was not a basis  
 14 for any leak, and it wasn't to take care of Bill  
 15 Clinton. I sued Bill Clinton in 1983, you know. If  
 16 the Republicans think that I was trying to do them a  
 17 favor, knowing that a federal judgeship was going to  
 18 go down the tubes with this, then I can't imagine if  
 19 that's the attitude up here, I don't know, but --

20 Q Were you concerned that a decision made in  
 21 this case would jeopardize your chances for a federal  
 22 judgeship?

1 MR. BEN-VENISTE: Objection to the form of  
2 the question.

3 THE WITNESS: No, no, no.

4 MR. BEN-VENISTE: A decision, you mean a  
5 particular decision.

6 BY MR. GICALE:

7 Q A particular decision.

8 A No, because in my view, at that point in  
9 time, in my judgment of what was going on, he is  
10 probably going to win anyway. I mean -- I felt --  
11 here is what I felt, here is what I was trying to do  
12 and I tried to say it in my letter, maybe I made a  
13 poor choice of words, but what I was trying to do is  
14 this: I was trying to say I did not want to try to  
15 influence that election even inadvertently, even if  
16 it wasn't intentional.

17 I am not saying someone was doing it  
18 intentionally. But given human nature, that there  
19 were two full-time competing reporters walking the  
20 halls and every time we did even grand jury subpoenas  
21 for records, that got out in the media. And I knew  
22 that that was what was going to happen. And what I

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1 was trying to do is do what I thought my oath of  
2 office, and what my moral duty called for, and not be  
3 involved in something that I thought was politically  
4 improper when I took an oath of office, to follow the  
5 Constitution and not try to influence and try to help  
6 my party. Sure, I wanted to help my people.

7 Q Well, when you said he was going to win  
8 anyway, was it your intent if he won to seek his  
9 assistance in obtaining this judgeship afterwards?

10 A Absolutely not. And let me tell you this,  
11 since there's that implication in that question, I  
12 have not.

13 MR. BEN-VENISTE: I didn't think that  
14 implication refers to anything other than the  
15 questioner here today.

16 THE WITNESS: Well, the point is I didn't  
17 talk --

18 MR. SGRO: Let him say what he wants.

19 THE WITNESS: I didn't talk to  
20 Mr. Clinton. I didn't talk to anybody over there  
21 about a federal judgeship or anybody within the  
22 Department of Justice about saving my job as U.S.

1 Attorney. My view was when the other side wins -- I  
2 was the sixth in the country to resign -- and they  
3 win, that's the end of it. And I had a high profile,  
4 very honorable position. And there had been  
5 instances of other U.S. attorneys around the country  
6 historically, lots of Democrats by the way, that  
7 wouldn't leave office. And I just said that's not  
8 the way I wanted to handle it. That's not my style.  
9 I am going resign and that's it. I well knew when  
10 Clinton won that there was not going to be a federal  
11 judgeship.

12 Q The letter you sent to Mr. Pettus on  
13 October 16, 1991, there was a cc to Mr. Dodson, and  
14 eventually you sent a copy of that to Ms. Henneman  
15 and the executive officer, Mr. Dodson sent it. Did  
16 anyone else receive a copy of that letter that you  
17 are aware of?

18 A No. I don't know why she put cc there on  
19 to Mr. Dodson other than to make sure that I wanted  
20 him to have a copy of it in addition to the copy I  
21 sent out to Don. Now I think he sent -- I think he  
22 sent either my copy or his copy right on to the

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1 department.

2 Q I am going to show you what's marked for  
3 identification -- off the record.

4 (Discussion off the record.)

5 BY MR. GICALE:

6 Q I am going to show you what's marked for  
7 identification, as a document identified as Bates  
8 number 6664. It is a letter dated October 16, 1992,  
9 to Donna Henneman from you, I believe, enclosing a  
10 copy -- would that be enclosing a copy of your letter  
11 to Mr. Pettus? Could that have been --

12 A That's what it is supposed to be. I mean,  
13 that's what I instructed I wanted done. I either  
14 told Mrs. Carter, my secretary, or Mr. Dodson, the  
15 first assistant, to send this on up to Washington,  
16 send this letter up there.

17 Q By the way, is that your signature or is  
18 that somebody signing for you?

19 A That's me.

20 Q And again, I was referring to document  
21 number 6664.

22 Now, after sending this letter on October



1 16, 1992 to Mr. Pettus and notifying the Executive  
2 Office for U.S. Attorneys, this letter to  
3 Ms. Henneman, when is the next time you had some  
4 discussions with respect to what to do with respect  
5 to this criminal referral in your office?

6 A I apologize, I am not sure I understood.  
7 After when now? After the 16th?

8 Q Right.

9 A I don't recall having much more discussion  
10 about it throughout November and December, other than  
11 every once in a while, I think I would say to Mac,  
12 have we heard anything from the FBI, have we heard  
13 anything from DOJ about that referral. And I think  
14 the general comment back was, no, I haven't heard  
15 anything.

16 Then he came in, sometime around January  
17 27, and said some confusion is going on here, they  
18 called. I said who is they. He said this -- I'm  
19 sorry, Ms. Lewis, is that her name, Jean -- Ms. Lewis  
20 has called and wants to know -- wants me to give her  
21 legal advice on how to handle a media inquiry or some  
22 type of FOIA inquiry regarding these documents. And

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1 I believe he said she wants to know the status of the  
2 investigation. And I said, that's funny.

3 So, I said to myself or said to Mac, I  
4 can't remember now, but I know we talked about it, I  
5 said I think we need to get this clarified up there  
6 once and for all, that we have heard nothing else  
7 from the FBI, nothing else from RTC to today's date.  
8 I have been busy with other things, busy with  
9 gun-free, drug-free school zones program in Arkansas,  
10 and also in a transition process of preparing when I  
11 was going to resign and when I was going to leave.  
12 They need to know we don't have any investigation  
13 going on here, not in the classic sense, we are not  
14 doing grand jury work.

15 Q So what steps did you take to clarify that  
16 for them? And the "them" you are referring to is  
17 main Justice.

18 A If you will let me see my letter, January  
19 27, let me refresh myself.

20 Q Okay. I am going to show you what's marked  
21 for identification as document 7049 through 7050, a  
22 letter dated January 27, 1993 to Donna Henneman from

1 you --

2 A Right.

3 Q -- regarding criminal referral C0004.

4 A Okay. In reviewing this, what I was trying  
5 to do in my letter of January 27 is correct any  
6 confusion that may be in existence with RTC or with  
7 the Department of Justice, that we did not have a  
8 formal investigation initiated and ongoing. And  
9 secondly, if that's what they wanted to do, in my  
10 judgment, that it would -- that I had a conflict of  
11 interest, to proceed on with it, that we ought to let  
12 the new U.S. Attorney do it because I had told my  
13 Senators, and I think I told DOJ sometime just prior  
14 to the 27th, that I was going to resign and leave  
15 March the 1st.

16 But I also indicated in the letter that if  
17 they -- at least I was trying to indicate in the  
18 letter, if they wanted to do something and get  
19 something up and going on the McDougals with those  
20 records, then I would hand them over and I will do  
21 what they want to do to get it up and going. But I  
22 basically was trying to say, if the department wants

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1 to do this, then they need to send their career  
2 prosecutor in here and do it.

3 And I mentioned to you the conflict that I  
4 felt that I had, about being at that point in time I  
5 was still, I guess, a nominee, but I might as well  
6 say the federal judgeship, that was moot.

7 Q What was it that you felt was your conflict  
8 at that point? Was it the judgeship or was it the  
9 issue with respect to Mr. McDougal's past trial?

10 A Both. No question it was both.

11 I felt like that if we were really going  
12 to -- if everyone wanted to fire up and take another  
13 shot at Mr. McDougal, I think the department needed  
14 to know that my participation in it would probably  
15 lead to some more political embarrassment because I  
16 didn't feel like the case deserved the resource  
17 commitment and the case deserved the potential  
18 embarrassment to the Department of Justice for the  
19 reasons I said earlier; the condition of the man, we  
20 weren't going to select any money, we had other S&Ls  
21 that needed to be worked more.

22 And what I didn't put in here, but what I

1 discussed with Mac and my wife at that point in time,  
2 is that it strikes me as inappropriate for a judicial  
3 nominee to be engaged in pursuing this investigation,  
4 if, in fact, that the real purpose of pursuing it is  
5 to try to indict the witness instead of the real  
6 principals involved in the crime. Because, as a  
7 nominee, a federal nominee I just think there was no  
8 way not look like I was misusing my office.

9 Q Now, at that point, in the last paragraph  
10 of the first page of that letter dated January 27,  
11 you indicated in the second sentence, that as  
12 previously indicated, "it seems prudent that a  
13 limited preliminary investigation of allegations  
14 pertinent to Mr. and Mrs. McDougal and Ms. Anspaugh  
15 should be considered" --

16 A Where are you? I'm sorry.

17 Q The last paragraph on the first page of  
18 that letter.

19 A Okay.

20 Q Second sentence.

21 A I am not sure I understood what your  
22 question was.

1 Q Without reading that sentence again, and  
2 you have now read it, and then you went on to say in  
3 the next sentence, "the taking of 302s from these  
4 individuals should determine whether there is merit  
5 to substantiate further investigation." Is that  
6 consistent with what your feelings were at that point  
7 in time?

8 A Well, it is consistent with this. My  
9 feelings were, what I was trying to express in this  
10 letter, was that I was not outright declining, as  
11 United States Attorney, an investigation of that  
12 referral as it relates to Mr. and Mrs. McDougal and  
13 Ms. Anspaugh or anybody else. But what I was trying  
14 to say, that if there was anybody that warranted an  
15 investigation, that's who I saw had done something  
16 that appeared to me to be criminal. I didn't see  
17 from it my examination of the referral as to others.

18 And I was basically trying to reiterate  
19 what I had said to the FBI, and what I said in the  
20 previous letter, that I am not trying to can it, but  
21 I really think it is worthy of only limited work. I  
22 mean, it's --

1 Q Now, in the last paragraph of the second  
2 page of your letter, the first sentence says "I would  
3 appreciate and expect that any decision of the  
4 investigation, indictment, prosecution or declination  
5 to be the responsibility of the Department of  
6 Justice." And what is it that you meant by that  
7 sentence?

8 A Well, basically trying to sum it up, that I  
9 felt like I had, and therefore the office had, a  
10 conflict and we needed to recuse, given what I had  
11 said before, in my previous letters. And that if  
12 they wanted to take the case and work it and work it  
13 right, then they should bring someone in to do it and  
14 make a decision, make the call on that. I felt like  
15 if I made the call, it might be contrary to what they  
16 wanted to do, might be inconsistent with what they  
17 thought was proper.

18 Q Well, was it your belief that you placed  
19 the ball in main Justice's court at that point in  
20 time, and you were asking them to make a decision as  
21 to whether to proceed themselves, or --

22 A Yes. If you use the term placing the ball,

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1 I thought I put the ball in play back in their court  
2 in October. I thought what I was saying in this  
3 letter, once and for all, look, if you want this case  
4 worked, I've got a conflict here, and I don't have  
5 time to work it -- I didn't say those words -- I'm  
6 leaving and you need to get somebody on this and do  
7 something with it, if that's what you want done and  
8 you want it done right now.

9 That's what I was trying to say that hey,  
10 here is a red flag, I've told you I had a hot potato,  
11 then the hot potato sat there with nothing going on.  
12 after the election, not a peep from anybody that I  
13 recall ever saying do this, do that, don't do this or  
14 don't do that. And here we are on the 27th, Jean  
15 Lewis is fired up again and I was trying to say, I  
16 need to get this clarified once and for all.

17 Q Did you think that, when you left, that  
18 your office could still assume responsibility for the  
19 prosecution?

20 A My office could still assume  
21 responsibility, I don't know what I thought about --  
22 I guess in retrospect probably -- I thought that if

1 the U.S. Attorney had a conflict and I thought that  
2 basically the office had a conflict or maybe it  
3 didn't work that way because I don't believe I ever  
4 declared a conflict in any case before that one. I  
5 can't recall. Maybe we did in one or two. But in  
6 any event, I don't really know how to answer your  
7 question. I will tell you, if you want to know, what  
8 was going on in my mind --

9 Q Yes.

10 A -- what I assumed.

11 Q Yes.

12 A This is the speculation.

13 I assumed that, if the Department of  
14 Justice would analyze the case, that they would  
15 concur with me. That based upon this one referral,  
16 not any more that's come in since then, that they  
17 would concur with me, that it did not justify working  
18 the case, just to try to convict Mr. and  
19 Mrs. McDougal. And that, if they felt that the case,  
20 that I was in error in my judgment of the first  
21 analysis as it relates to the witnesses and they felt  
22 it should be prosecuted, that they would send a

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1 battery of career people in, or remove the case and  
2 take it to Washington and main DOJ would take it  
3 over.

4 I didn't ever assume for a second that if  
5 the real target of who they were going to go after  
6 would be the witnesses that they would let the U.S.  
7 Attorney, regardless of who it was, in Little Rock,  
8 handle that without guidance and direction or  
9 participation, solely on his or her own.

10 (Whereupon, at 12:35 p.m., the deposition  
11 was recessed, to be reconvened at 1:30 p.m. this same  
12 day.)  
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AFTERNOON SESSION (1:42 p.m.)

Whereupon,

CHARLES A. BANKS

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. GICALE:

Q Now, Mr. Banks, after you sent out the letter to Donna Henneman in January of 1993, January 27, did you have any further discussions with anybody at the Department of Justice with respect to your request for recusal and your request to have them make a decision with respect to this matter?

A No, I never heard anything else about the letter.

Q And do you know what happened with the letter or your request for recusal, where it went?

A No, it seemed like I heard -- seemed like I heard or read in the paper that the recusal was denied in March, or somebody said June, I am not sure, but it was after I was gone that there was even any response to the --

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Q And again, you left the last day of February, 1993?

A Right, whatever the last day of the month was. I think that was one of the long years.

Q Now, from the time you received criminal referral C0004, which would have been September of 1992, to the time you left the U.S. Attorney's Office at the end of February, 1993, did you or anyone in your office have any contacts with any present or former employee of the White House with respect to that referral?

A I can't speak for anyone in my office, but no one ever told me they had any contact with anybody up there. And if I understand your question correctly, no, I didn't talk with anybody. You are talking about the new administration?

Q No, the old administration.

A You mean the Republican administration?

Q Yes.

A No, I didn't have any -- I am getting confused. Isn't that what you just asked me a minute ago?

1 Q I asked you the dates and the time periods  
2 were from September 1992 through the time period when  
3 you left at the end of February 1993, so I suppose  
4 that would include both administrations. Did you or  
5 anyone in your office have any contacts with any  
6 present or former employee of the White House related  
7 to criminal referral C0004?

8 A Oh, the White House? I'm sorry.  
9 Absolutely not. I can't speak for the rest of the  
10 office, but I have to assume I would have heard  
11 that. No, I can't imagine anybody talked to the  
12 White House.

13 Q Anybody in the Bush Administration or the  
14 Clinton Administration; is that correct?

15 A I know I have not talked with anybody, Bush  
16 or Clinton Administrations, with any present or  
17 former employee of the White House.

18 Q Do you have any knowledge of any contacts  
19 between any member of the Department of Justice and  
20 the White House regarding criminal referral C0004?

21 A Between the White House and the Department  
22 of Justice?

1 Q Right.

2 A No.

3 Q Did you have any discussions with anyone,  
4 other than the FBI and people that you have mentioned  
5 here today, with respect to C0004 while you were the  
6 U.S. Attorney?

7 A No.

8 Q September 1992 through the end of February  
9 1993?

10 A No.

11 Q Did anybody attempt to influence you to  
12 bring this prosecution?

13 A No.

14 Q Did you know anyone listed in the referrals  
15 as a target or a witness?

16 A Let me go back to answer your last  
17 question, other than what we discussed about I felt  
18 like Ms. Lewis was --

19 Q Right.

20 A -- attempting to get us to prosecute the  
21 case, obviously, but in the context of what you are  
22 saying, no, nobody outside, no outsider or anybody

1 within the White House or DOJ or the political party  
2 or whatever. I'm sorry to interrupt you.

3 Q Okay, so your answer is no?

4 A Right.

5 Q Did you know anyone listed in the referrals  
6 as a target or a witness? Now, to answer that  
7 question, do you need to look at a copy of the  
8 referral again?

9 A Probably.

10 MR. BEN-VENISTE: You mean was he  
11 personally acquainted with, was that the question?

12 BY MR. GICALE:

13 Q Yes, are you personally acquainted --

14 A First I knew everybody in the -- I think.  
15 I am trying to remember. Are you talking about  
16 Lieutenant Governor Tucker? Are you are talking  
17 about Mr. Clinton? Are you are talking about  
18 Mrs. Clinton?

19 Q Hold on. Again, I will show you what's  
20 marked as Bates numbers 6694 through 6714, this is a  
21 copy of the letter to your office, and then a copy of  
22 the referral and there are a list of targets and

1 witnesses.

2 A What page is it? Here is the list of  
3 witnesses.

4 Q Let's start with the targets first, the  
5 McDougals, James McDougal, Ms. Susan McDougal.

6 MR. BEN-VENISTE: He prosecuted them. How  
7 much time do we need to spend on this, Lou?

8 MR. GICALE: I understand.

9 BY MR. GICALE:

10 Q Were you personally acquainted with James  
11 or Susan McDougal?

12 A No, I don't recall Mr. McDougal. He claims  
13 when he ran for Congress, he made this statement to  
14 the newspaper that I had come into his district and  
15 made a speech or something against him, which is --  
16 that's not accurate. No, I didn't know the man  
17 until -- or his wife.

18 Q What about Lisa Anspaugh?

19 A No, I don't know her.

20 Q What about Jim Guy Tucker?

21 A Yes.

22 Q How did you know him?

1 A I knew him from both the fact that he was a  
2 Democratic officeholder and a Democratic candidate.  
3 And when he was Attorney General of Arkansas, I was  
4 employed in the Attorney General's office for about  
5 less than six months right out of law school.

6 Q As an Assistant Attorney General?

7 A No, I was a -- I don't know what they call  
8 them, but I wasn't a deputy or an assistant. I was  
9 just a beginner in the criminal division. I was  
10 assigned to write criminal briefs.

11 Q Okay.

12 A I never even argued a case because I became  
13 public defender and moved back to my home county  
14 right after going to work there.

15 Q Did you know him prior to obtaining a job  
16 there in the Attorney General's office?

17 A I am trying to remember. Seemed like I met  
18 him, informally, during some type of political  
19 function when I was in law school. But no, "know  
20 him," meaning did I talk to him on the phone did I  
21 socialize with him, no.

22 Q Did you socialize with him after working at

1 the Attorney General's office?

2 A No, I was only around him one time at the  
3 time I was there and I was in a group when he made a  
4 speech in Searcy, Arkansas.

5 Q And after leaving the Attorney General's  
6 office, did you have any other -- spend any other  
7 time with Mr. Tucker?

8 A I don't recall seeing Jim Guy Tucker but  
9 maybe twice after I left there. I mean, just run  
10 into him at some -- I think I ran into him one night  
11 at a restaurant, shook his hand and said hello.

12 Q What about Bill Clinton and Hillary  
13 Clinton?

14 A Yes, I know both Bill and Hillary Clinton.

15 Q How do you know them?

16 A Well, when he was -- when I was in the  
17 Democratic party -- which I was at one time, I am  
18 Republican by choice -- he was the nominee for  
19 Attorney General --

20 MR. SGRO: Off the record.

21 (Discussion off the record.)

22 BY MR. GICALE:

1 Q Continue on.

2 A He was the nominee for Attorney General and  
3 I supported him when he ran. I don't think I saw him  
4 but one time during that period. He came to my  
5 hometown and I introduced him to people over at the,  
6 I think the courthouse and maybe someone downtown. I  
7 don't recall him coming back again.

8 Q Did you have any other subsequent  
9 relationship with him or any other contact with  
10 Mr. Clinton?

11 A I am trying to remember. I supported him  
12 in his -- when I say "supported," I mean I didn't do  
13 anything for him in '78, that I recall. Seemed like  
14 he ran in '78. I was still in the -- still a  
15 Democrat. And I voted again for him and supported  
16 him in 1990, but after that, that was --

17 Q In 1990?

18 A 1980.

19 Q 1980?

20 A Yes.

21 Q In his run for governor, I take it;  
22 correct?

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1 A Yes, that's correct.

2 Q And did you have any other contact with him  
3 after that 1980 race?

4 A Let's see. I saw him in 1982 on several  
5 occasions just when you cross paths on the campaign  
6 trail. I ran for -- I was the Republican nominee for  
7 United States Congress in the First District of  
8 Arkansas and he was a candidate for governor in  
9 1982. And I would see -- you know, just passing, say  
10 hi or something like that, and I don't remember doing  
11 that very much.

12 Q Do you have any other contacts with him  
13 after that?

14 A Yes, I had seen him in 1983. I was the --  
15 I was in private practice and I was the Republican --  
16 I was general counsel to the Republican party of  
17 Arkansas. And I agreed to undertake a representation  
18 of a gentleman, I think his name was George Smith,  
19 who was the director or Commissioner of Labor for the  
20 state of Arkansas, and we believed he had been  
21 discharged due to his political affiliation after  
22 Mr. Clinton won the election. And I filed a lawsuit



1 in United States Federal Court, sued Governor Clinton  
2 officially, in his official capacity, and the  
3 individual took the case to trial with a jury and we  
4 lost.

5 Q Did you have any other contact with  
6 Governor Clinton after that case?

7 A Let me think here just a second. After  
8 1983? I think the only time I saw Mr. Clinton,  
9 President Clinton after that, to the best of my  
10 recollection, I saw him once at an Arkansas Trial  
11 Lawyers meeting where he spoke and I spoke, but  
12 obviously there was not a lot of warmth, just a  
13 professional passing.

14 And I ran into him one day at the downtown  
15 YMCA after he had been elected President and I spoke  
16 and he spoke and that was it. And I don't recall  
17 having seen him, been around him, talked to him,  
18 socialized with him, visited with him or in any way  
19 had any interaction with he or his wife other than  
20 what I have told you. I mean, I --

21 Q Steven Smith, he is listed in this referral  
22 as a potential --

1 A I know him only by sight and having met him  
2 a couple of times, years and years ago. Just spoke  
3 to him because he was an administrative assistant, I  
4 think, at one time to Governor Clinton, early on, in  
5 the early days of the Clinton Administration. But  
6 other than that, I don't believe I have ever said  
7 another word to Mr. Smith.

8 Q Now, earlier when you said that that was  
9 the extent of your contact with Mr. and Mrs. Clinton,  
10 you didn't outline any contacts with Mrs. Clinton at  
11 all, so I take it --

12 A I am sitting here looking at that in my  
13 mind -- I am trying to dig back and think, was there  
14 any time -- I only think that I have been around  
15 Mrs. Clinton -- I can't imagine more than three or  
16 four times total. I mean just like speak to her  
17 after a speech to the Pulaski County Bar Association,  
18 that's the Little Rock Bar Association, after a  
19 speech, hello.

20 Q Were they business or social contacts?

21 A Just a professional greeting. I mean --

22 Q That was the extent of your contact with

1 her?

2 A Yes, and one day I saw her at the YMCA and  
3 said hello.

4 Q What about Webster Hubbell? Now, he is not  
5 listed in this. Did you know him?

6 A Oh, yes. I know him. I am trying to think  
7 how to phrase this question so it doesn't sound like  
8 we're closer than what we actually were.

9 First off I got to know him when I played  
10 high school football against him. And the only way I  
11 got to know him then was because he was an  
12 outstanding player and he introduced himself to me on  
13 the field two or three times and he was a good  
14 player, I knew who he was.

15 I later met him again only in an informal  
16 capacity when we attended the University of Arkansas  
17 School of Law. And he was also a Razorback football  
18 player when we were both in undergraduate school.  
19 But I don't recall ever seeing Web one time in  
20 graduate school. And I don't recall ever doing  
21 anything more than saying hello to Web Hubbell once  
22 or twice in law school and once or twice in Little

1 Rock, just see him in a restaurant and say hello. I  
2 never had a case with him or against him. We didn't  
3 socialize, we didn't have lunch, be in each other's  
4 home or go to church or anything like that.

5 This Greg Young, I don't have any idea who  
6 he is.

7 Q I'm sorry. What was your response on Greg  
8 Young?

9 A I have no idea who that is.

10 Q And J.W. Fulbright?

11 A Of course, everybody knew Senator  
12 Fulbright. I recall only being around him one time  
13 and that was like '74. I was at a table at a dinner  
14 where he was. And that -- I mean, that's the extent  
15 of it. I was at the table.

16 Q Kirby Randolph, who is listed as a  
17 receptionist at the Madison Savings --

18 MR. BEN-VENISTE: What conceivable  
19 relevance could this have, Lou? Lou, is this --

20 MR. GICALE: I will go through it quickly.

21 THE WITNESS: No, I don't know Kirby  
22 Randolph, Bonnie Cochran or Charles E. James. I

1 don't know those people.

2 BY MR. GICALE:

3 Q Now, did you or anyone from your office  
4 have contacts with any individual who was listed as a  
5 witness or a target in this referral about the  
6 referral?

7 A No.

8 Q And again, the referral is C0004.

9 MR. BEN-VENISTE: Yes, it is.

10 BY MR. GICALE:

11 Q Do you have any knowledge of any improper  
12 handling within the Department of Justice regarding  
13 the referral of Madison Savings & Loan?

14 A No. I mean -- what do you mean by  
15 "improper"? You mean something unethical --

16 Q Improper in your view.

17 A No.

18 Q Do you know, do you have any knowledge?

19 A I mean, as I told you earlier, I had  
20 anticipated that I would hear something and I was  
21 surprised when I didn't hear something from the  
22 department after I sent them the initial

1 notification. But I don't deem that to be -- I mean,  
2 I am not sure that wasn't anything, a paper or  
3 referral getting misplaced, a miscommunication. I am  
4 not trying to embarrass the department or anything  
5 like that. I don't know anything that was done that  
6 was improper.

7 Q Do you have any knowledge of information  
8 relating to RTC criminal referrals being shared with  
9 individuals other than employees of the Department of  
10 Justice?

11 A No.

12 Q The FBI or the RTC?

13 A No.

14 Q Between the time that Mr. Clinton came into  
15 office at the end of January 1993 and the time you  
16 left the U.S. Attorney's Office at the end of  
17 February 1993, did you or anyone in your office have  
18 contacts with Webster Hubbell regarding criminal  
19 referral C0004?

20 A No.

21 MR. GICALE: I have nothing further at this  
22 point.

## EXAMINATION

BY MR. BEN-VENISTE:

Q Mr. Banks, could you briefly provide your work history in chronological order. We kind of skipped around a little. From the time you left law school, I take it your first position was with the Attorney General of Arkansas in a research or clerking capacity?

A Yes, I was a member of the criminal division. I think I was there about four months. I am not even sure I was there that long anyway, but I started my actual substantive career first as public defender, Mississippi County, Arkansas. I served in that capacity from, I think July of '73, until -- my gosh, I can't remember now -- I think '75. At which time, I resigned and entered the private practice of law as a solo practitioner and also became the deputy prosecuting attorney for the north end of Mississippi County, Arkansas.

In 1978, I -- let me back up. 1977 I invested with three friends as principals, I was a company lawyer at first and then I became a full-time

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in-house lawyer for a company called Martech, which was a company we created to sell industrial products, paint and industrial solvents, coatings. And I did that for a year and we were unsuccessful. We could not make the company show a profit so we shut it down.

I resumed my private practice, and -- in 1978. I took in a partner, Dan Ritchey. The firm name was Banks & Ritchey. I practiced in that capacity through and until -- let's see, I started shutting my practice down in July of 1987 to take the position as United States Attorney.

I served as United States Attorney, as I said earlier, from like November 1987 until on about March the 1st, 1993. I am former president of the Arkansas Trial Lawyers. I am board certified as a civil trial specialist by the National Board of Trial Advocacy. I have tried probably 60 or more jury trials, and more nonjury trials than I can actually count. I don't mean to say that to be braggadocio. I am telling you primarily that's what I have done.

Q When did you first become active in

1 Republican politics?

2 A I got disenchanted with the Democratic  
3 party, in the policies and the philosophies, where we  
4 were going after the Jimmy Carter election. And I  
5 first decided that I was not going to be active in  
6 any party politics. And so, friends of mine, I had a  
7 lot of mutual friends in Mississippi County that were  
8 what I call the New Wave of Republicanism and they  
9 encouraged me to get involved.

10 And I talked to a fellow who was a  
11 congressman named Ed Methune and that was in like  
12 1981, right after the 1980 election. Within about a  
13 year I started giving some serious thought and by  
14 1982, I liked Reagan. And by the way, I am a Reagan  
15 appointee as United States Attorney.

16 Q So, by 1982, you were about to say, you had  
17 decided to run for public office?

18 A Yes.

19 Q For national office?

20 A Yes, for Congress.

21 Q As --

22 A As a Republican.

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1 Q As a Republican from your home district?

2 A Mississippi County.

3 Yes, First District of Arkansas.

4 Mississippi County was one of the 24 counties.

5 Q And thereafter, did you run for any other  
6 elective office?

7 A No.

8 Q Did you continue to be active in Republican  
9 politics?

10 A I did. 1983, '84, I served as legal  
11 counsel for the Republican party and stayed fairly  
12 active in '84, but because I am a small firm  
13 practitioner and still am, and the litigation -- I  
14 just couldn't stay active.

15 Q I am not criticizing you for not staying  
16 active in Republican politics, but what I was trying  
17 to get at is whether you ran for other office or  
18 whether you were active in some capacity in the party  
19 following your service as counsel to the Arkansas  
20 Republican party.

21 A No.

22 Q And you were willing to be nominated by the



1 President and confirmed for United States Attorney  
2 for the district by President Reagan?

3 A Oh, yes.

4 Q And in that capacity, did you attend the  
5 normal Republican functions and so forth within the  
6 state?

7 A Never.

8 Q And it was your view that, once you assumed  
9 office, you would not only in fact be nonpartisan in  
10 your actions, but you would give no appearance  
11 otherwise?

12 A I tried my best not to.

13 Q Now, you indicated that at some point you  
14 were nominated for federal judgeship. Could you  
15 specify when that was?

16 A I was first selected by Congressman John  
17 Paul Hammerschmidt sometime in the middle or early  
18 summer, maybe it was like July or August, of '92.  
19 Yes, '92. And then the names were submitted to the  
20 Senate or I was confirmed -- I am not sure I am using  
21 the right terminology. But I was then nominated, I  
22 think, by the President and my name was submitted to

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1 the Senate for confirmation.

2 Q And that was somewhere around Labor Day,  
3 thereabouts?

4 A Step two was in like August or September,  
5 and then it went over to the Senate in September of  
6 '92.

7 Q Was it ever acted on?

8 A No.

9 Q Now, is it fair to say that you would very  
10 much like to have been confirmed for that federal  
11 judgeship; this was a high honor and the culmination  
12 perhaps of many things that you had been working for  
13 in your professional life?

14 A Yes, that's fair to say. It certainly was  
15 a high honor to be nominated.

16 Q Nevertheless, in spite of your desire to be  
17 confirmed as a federal judge and to have the backing  
18 of your party, it was your view, was it not, that you  
19 would not lend yourself to what you regarded to be a  
20 politicized referral by an individual or individuals  
21 at the RTC relating to the Madison bank matter?

22 A Well, there is no question the answer is

1 yes. I just want to make sure I am hearing your  
2 whole question. Yes, I was trying not to -- I was  
3 trying to avoid any decisions based upon politics.

4 Q Was there --

5 A I mean, don't get me wrong. It certainly  
6 crossed my mind that there was an opportunity to help  
7 the home team, but I just --

8 Q When I was in the Department of Justice,  
9 which may have been a little earlier than you, there  
10 was a motto that we went by that came from a decision  
11 by one of America's noted jurists in which he  
12 described the prosecution function, in which he said  
13 that the prosecutor may deliver hard blows but not  
14 foul ones.

15 And in your view, would you have considered  
16 accelerating the investigation of this RTC referral,  
17 beyond how such a referral might normally be handled  
18 by your office, as potentially constituting a foul  
19 blow?

20 A Absolutely, based upon the referral I had  
21 at hand.

22 Q Now, earlier in your testimony, I believe,

1 you used the phrase "request slow down" to  
2 characterize how you were treating the referral, by  
3 Ms. Lewis and Mr. Iorio. In that regard, was what  
4 you were saying that you were going to slow down  
5 something beyond the way it would be normally  
6 handled, or were you saying that you would not lend  
7 yourself or your office to accelerating the matter  
8 ahead of where it might normally be considered?

9 A At what point? I am not sure I am clear.

10 Q You talked about when you received this  
11 referral in September of '92, and then you said that  
12 you were of a mind to slow down the referral.

13 Do you mean by that slowing down the  
14 posture that Ms. Lewis was taking in terms of urging  
15 a grand jury to be --

16 A Yes.

17 Q -- convened?

18 A Yes.

19 Q Did you mean to say by that, that under  
20 normal circumstances this referral, if it didn't  
21 involve any of the people we have been talking about,  
22 would have been handled in a more expeditious way?

1 A No.

2 Q Indeed, you indicated that it was very  
3 unusual for an RTC investigator to be calling your  
4 office and pushing the office to issue grand jury  
5 subpoenas; is that correct?

6 A It was on from my experience. Now, the one  
7 thing I don't want to suggest is that RTC  
8 investigators or any investigator that's trying to  
9 get his case moving would not talk to an individual  
10 AUSA. But the fact that -- I thought it was made  
11 clear to her -- that given the sensitivity of this  
12 referral, we're not going to do anything right now,  
13 would cause her to understand there is no need to  
14 call back right now. We are going to take this in  
15 due course.

16 But that is not what happened, and that's  
17 what I thought was unusual.

18 Q Did you receive any inquiries from the  
19 press relating to this matter, you or your office?

20 MR. GICALE: What time period are we  
21 talking about?

22 MR. BEN-VENISTE: From the time he received

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1 the referral.

2 THE WITNESS: I don't recall one, no.

3 BY MR. BEN-VENISTE:

4 Q With respect to the FOIA request that you  
5 mentioned Ms. Lewis had brought to the attention of  
6 Mr. Dodson, do you remember how you handled that?

7 A Not any more than what I testified to  
8 earlier, when he came in and told me about it, and I  
9 concluded there seemed to be some real confusion  
10 about what we are doing and what we are not doing.  
11 And I need to write a letter and send my letter of  
12 October the 16th back up there and see if we can get  
13 straight about where they think we are or where they  
14 think we're not.

15 Q You mentioned that, among the things that  
16 went through your mind during the period of time,  
17 that you were considering how to handle this referral  
18 was the fact that there had been reference during the  
19 Presidential campaign to the search of various files  
20 relating to Mr. Clinton's passport when he was a  
21 younger man; do you recall that?

22 A Yes.

1 Q In drawing the parallel between that and  
2 this criminal referral, did it occur to you that  
3 there might be appropriate criticism of the  
4 Department of Justice, and possibly your office, were  
5 you to accelerate consideration of this matter by  
6 convening a grand jury or doing some -- taking some  
7 other overt step that would be of a piece with the  
8 passport office inquiry, which might come under the  
9 general rubric of misuse of official position or  
10 government office for partisan political reasons?

11 A I am not sure I totally understand your  
12 question, but I think I can answer it this way: I  
13 mentioned that as an aside of what I had read in the  
14 newspaper, and what I thought could come, even  
15 accidentally, from an improper handling of the  
16 referral and from the issuance prematurely of grand  
17 jury subpoenas, that it could easily, at that late  
18 stage, be turned into a media issue, that I thought  
19 could be detrimental or unfair to everybody, the  
20 President of the United States, President Bush,  
21 Department of Justice, the witnesses listed on there,  
22 that seemed to fly in the face of what we always

1 tried to do, have absolute secrecy surrounding a  
2 grand jury.

3 Q When you mentioned in that context that, as  
4 you looked at the referral and in the way it was  
5 written and in the context of the persistence of  
6 Ms. Lewis in the request that she was making, you  
7 indicated that the purpose seemed to be to indict the  
8 witnesses instead of the target.

9 Did you mean, by the use of the word  
10 "indict," to indict them in the eyes of the press as  
11 opposed to any formal indictment by a grand jury?

12 A No, no, I can't agree with that  
13 characterization.

14 What I was trying to say is that it was  
15 clear to me that the insistence of pressure for  
16 timeliness would not have come up were it not for the  
17 names of the people involved as witnesses.

18 I could not imagine, nor did I get the  
19 impression during any visit I had with Mr. Dodson or  
20 anybody else with the FBI, that the thirst for speed  
21 in that case was occasioned by Mr. and Ms. McDougal.

22 I mean, there was no hot potato in my view

1 without the witnesses.

2 Q And in that regard -- and I made a note of  
3 it at the time -- you used the term "indict the  
4 witnesses," and what I wanted to do was seek your  
5 clarification for what you meant by that, if you  
6 remember that part of your testimony.

7 I presume what you meant by that was to tar  
8 them in the public eye with the existence of an  
9 investigation as opposed to some notion of formally  
10 indicting the witnesses along with the targets of  
11 that referral.

12 A I don't know if -- I can't sit here and say  
13 that Ms. Lewis had in the back of her mind that the  
14 only reason she was calling was to see to it that one  
15 of those witnesses got indicted, but it was my  
16 judgement that Ms. Lewis was not calling exclusively  
17 about the referral pertaining to Mr. and  
18 Ms. McDougal. And I don't think Ms. Lewis ever asked  
19 us to do anything improper, I don't think she did.

20 But I was under the impression Mr. Dodson  
21 had explained to her the sensitivity of the matter  
22 and she should know what the sensitivity was about,

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1 starting a grand jury investigation at that point in  
2 time. And I'm sorry not to give you a yes or no, but  
3 I feel like I need to try to explain it.

4 Q I am not sure I communicated the predicate  
5 for my question adequately, but I think your answer  
6 covers the grounds.

7 In your conversation with Mr. Pettus when  
8 he came to visit your office, and he told you that  
9 the director of FBI had communicated with him  
10 directly and wanted a report from him of some nature,  
11 was it your view that the folks at the director's  
12 level at the FBI as well as the people in Washington  
13 ought to know that you would not be a party to doing  
14 anything regarding this referral that might bring  
15 public attention to this matter prior to the  
16 election?

17 A I apologize again. I am not sure I  
18 understand totally your question, but the answer is  
19 yes. I assumed from the conversation that there had  
20 been communication from the FBI, and FBI Little  
21 Rock. I don't remember Don Pettus -- remember, this  
22 had been sometime back. I don't recall Don Pettus



1 saying I talked with Director Sessions and he said  
2 such and such.

3 But the conversation was sufficient that I  
4 had the impression or the distinct language that said  
5 they had certain aspects they had to check. But to  
6 answer your question, I assumed that -- at one point  
7 I thought they agreed with me -- that the only proper  
8 way to handle that was to not do anything until after  
9 the election.

10 Q "They" meaning FBI Little Rock?

11 A When I say "they," I am basically talking  
12 about Mr. Pettus and Mr. Irons, who were the heads of  
13 that -- I think it was Squad 3 that handled usually  
14 S&L white collar crime.

15 Q And then you saw some change of direction  
16 was manifested in Mr. Pettus's visit to you, to  
17 discuss some directive he had been given?

18 A The change in the direction, to the extent  
19 that my perception, was that there was a deadline of  
20 October the 16th, and that we needed to have some  
21 type of action taken or decision made. And that's  
22 when I basically said to Mac, I can't be on that

1 schedule; I don't know what they have to have done,  
2 but I'm not going to participate in it.

3 Q Count me out, you were saying. If you want  
4 to go forward with this thing in a way that may cause  
5 someone to be tarred with the fact that an  
6 investigation has been opened or is underway, then  
7 count me out; is that what you were saying?

8 A Yes, but again, remember, I am saying count  
9 me out if that's the effect of what is going to  
10 happen. I wasn't saying it somewhat intentionally  
11 was trying to use the FBI to somehow perfect that  
12 scenario.

13 Q You were thinking about it as a  
14 possibility?

15 A If that's the end result of this, if this  
16 is where we are going with this, regardless of what  
17 you call this deadline, I'm out. I'm not going do  
18 it. Unless, as I said earlier, unless somebody from  
19 DOJ calls me or tells me this is what's expected of  
20 you and here is why, someone had to show me where I  
21 was mistaken.

22 MR. BEN-VENISTE: I have nothing further.

## EXAMINATION

BY MR. GICALE:

Q Just one other brief question. Mr. Pence, he replaced you as interim U.S. Attorney; correct?

A Yes.

Q Did you discuss this case, C0004, before you left and he assumed office?

A I am sure I did, but I can't remember any of the substance of it. I am sure I had to because I know we reviewed a lot of cases in general. But I don't recall having any sit-down visit and say you need to do this and you need to do that, because basically he was the nominated -- even though he was interim, he was United States Attorney. And I just assumed that there would be some forthcoming directions of some sort.

Q Okay, now also just to -- in Mr. Ben-Veniste's cross-examination, when you mentioned the conversation with Pettus you mentioned Sessions, did Mr. Pettus indicate that there was a conversation with Mr. Sessions with respect to the direction?

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MR. BEN-VENISTE: I doubt he would have, since there is no evidence of the conversation.

THE WITNESS: Well, I was getting ready to say I don't remember him saying such a thing. All I remember is that -- I will use this terminology -- my understanding of the communication with Mr. Pettus was FBI Washington had said or given these directives to FBI Little Rock and this is what we need do, we've got to do. And I just sensed there was a sense of pressure to get something done that involved doing the investigation after I thought we had already all agreed that that wasn't the way to handle it.

And again I am not trying to -- I have a lot of respect for Don Pettus, a lot of respect for those people at the FBI. And I am not trying to say they were up to some type of skulduggery, I am just saying if the bureaucracy was taken over and if the communication lines were coming from Washington, Little Rock and Little Rock FBI over to my office and the end result was to do what we all agreed what shouldn't be done, then I said it is time for me to write a letter and tell everybody where I stand on

1 this once and for all so there won't be any blurred  
2 communications.

3 Remember, I didn't keep any notes of these  
4 meetings. I didn't dictate a summary of so-and-so  
5 did this and so-and-so did this, and sent it off to  
6 somebody. I dealt with people at face value.

7 Q So that your October 16 letter is the  
8 memorialization of that final position?

9 A Yes, as to where I was after the -- the  
10 last space says with the FBI about we need to go get  
11 this done.

12 MR. GICALE: Okay, I have nothing further.

13 MR. BEN-VENISTE: Nothing further. Thank  
14 you.

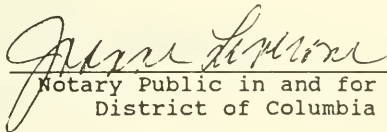
15 (Whereupon, at 2:30 p.m., the deposition  
16 was concluded.)

17 -----  
18  
19 CHARLES A. BANKS  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000





**DEPOSITION OF MICHAEL D. JOHNSON  
IN RE: S. RES. 120**

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**TUESDAY, OCTOBER 24, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of MICHAEL D. JOHNSON, called for examination pursuant to notice of deposition, at 2:35 p.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

ALICE S. FISHER, Esq.  
Majority Associate Special Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

PAUL J. FISHMAN, Esq.  
U.S. Department of Justice  
Tenth Street & Constitution Avenue, NW  
Room 4114  
Washington, DC 20530  
On behalf of the Deponent.

**ALSO PRESENT: ANDREW SCHAUER**

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## EXHIBITS

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## P R O C E E D I N G S

MS. FISHER: Good afternoon, Mr. Johnson.

My name is Alice Fisher and I'm associate special counsel to the special committee investigating Whitewater Development Corporation and related matters. To my left is Lance Cole and --

MR. SCHAUER: Andy Schauer.

MS. FISHER: -- Andy Schauer. This deposition is going to be conducted pursuant to Senate Resolution 120 -- I don't know if you've gotten a chance to see the Senate Resolution -- which establishes the special committee.

Section 1(b)2(c) of the Senate Resolution authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development. This will be the primary focus of today's deposition.

This deposition is in advance of public hearings that are likely to occur in November, and you will be notified in advance if you will be called to

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testify. We'll ask you a series of questions and ask you to testify under oath. If you don't understand a question, please let me know and I'll rephrase it.

MR. JOHNSON: Okay.

MS. FISHER: The stenographer will prepare a record of the questions and answers and the transcript will be treated as committee confidential until the commencement of the hearings. Prior to the hearings you'll receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and fill out an errata sheet. And since you're out of town we'll make some accommodations to get you a copy of your transcript prior to that time.

You may be represented by counsel. I see that Mr. Fishman is here representing the Department of Justice.

MR. FISHMAN: That's correct.

MS. FISHER: And Mr. Fishman knows he may object on grounds of privilege or relevance and any objections can be taken to the Committee Chairman.

Would you please swear the witness.

1 Whereupon,

2 MICHAEL D. JOHNSON

3 was called as a witness and, having first been duly  
4 sworn, was examined and testified as follows:

5 EXAMINATION

6 BY MS. FISHER:

7 Q Could you state your name for the record.

8 A Michael D. Johnson.

9

10

11 Q Your present business address?

12 A It's 425 West Capital, Little Rock,  
13 Arkansas 72201.

14 Q And your present employment position?

15 A I'm the First Assistant United States  
16 Attorney for the eastern district of Arkansas.

17 Q And could you give me a little idea of your  
18 employment history, your background?

19 A I started with the Department of Justice on  
20 October 15th of 1973. I was with the voting section  
21 of the civil rights division until January of 1976  
22 when I transferred to the criminal section of the

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6

1 civil rights division. I was with the criminal  
2 section until the end of January 1984 when I moved to  
3 the U.S. Attorney's office in Little Rock. I was  
4 senior litigation counsel there until being appointed  
5 as first assistant in September of 1993.

6 Q 1993?

7 A '93.

8 Q Okay. And can you tell me how many  
9 employees are in the eastern district of Arkansas  
10 U.S. Attorney's office, approximately?

11 A 45 to 50 overall staff.

12 Q And how many attorneys?

13 A 20, give or take one or two.

14 Q And you report directly to the U.S.  
15 Attorney?

16 A Yes.

17 Q And that's Paula Casey?

18 A Yes.

19 Q And did you speak to anyone other than  
20 counsel prior to your deposition, about the  
21 deposition?

22 A Yes.

1 Q Who did you discuss the deposition with?

2 A Paula Casey. Probably have mentioned the  
3 fact of the deposition to numerous friends.

4 Q Can you tell me the substance of your  
5 discussions with Ms. Casey?

6 A We talked about the areas that we thought  
7 might be covered, and just very general conversation  
8 about the areas that we thought might be covered.

9 Q Anything else about anything more specific  
10 than that?

11 A No, other than the timing and the  
12 scheduling of it. I know hers is tomorrow, for  
13 example. But no. In terms of the substance?

14 Q Uh-huh.

15 A No.

16 Q I think now might be a good time to explain  
17 the document that you brought with you today.

18 A Okay.

19 Q Could you just tell me what it is and why  
20 it was prepared?

21 A This is a chronology of events from 1993  
22 through 1994. I prepared it for my own purposes to

1 help me remember the dates, the relative order of  
2 events and other things that were going on in  
3 preparation for being interviewed by the independent  
4 counsel's office in May of 1995. My interview was on  
5 a Monday, I want to say May 8th, but I'm not sure the  
6 8th of May was a Monday. And this would have been  
7 prepared on the Sunday before that.

8 Q And did you have any assistance in  
9 preparing it?

10 A No.

11 MR. FISHMAN: Let me state that because it  
12 was prepared by Mr. Johnson for his own purposes and  
13 not at the direction of anyone at the Department of  
14 Justice, it's not clear that this is a Department  
15 document, but out of an abundance of caution,  
16 Mr. Johnson and I discussed this matter and agreed  
17 that it would be appropriate to provide the  
18 Committee, both to help the Committee in discussing  
19 Mr. Johnson's role in these events and also to avoid  
20 any suggestion that anything was being withheld for  
21 any particular reason.

22 MS. FISHER: Thank you.



1 MR. COLE: Since this document is not  
2 numbered and not part of the Department's prior  
3 production, would you object if we marked it as  
4 Johnson Exhibit 1?

5 MR. FISHMAN: No, in fact, I think that  
6 would probably be quite appropriate given the way  
7 we've handled other documents created by other  
8 witnesses. And, for the record, let me note that it  
9 is a document that bears a fax number of -- a fax  
10 heading at the top of the page, today's date from  
11 this morning. Mr. Johnson had this document in  
12 Little Rock, forgot to bring it with him this morning  
13 and had it faxed from his office in Little Rock this  
14 morning to him in Washington, so -- as well as some  
15 other papers that the Committee already has, which is  
16 why the numbers start higher, as I understand it. Is  
17 that correct?

18 THE WITNESS: Why the numbers --

19 MR. COLE: The page numbers start at page  
20 12 at the top.

21 THE WITNESS: Actually, the reason it  
22 starts at page 12 at the top is because there is --

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10

1 this copy of this chronology is the copy -- I have  
2 two copies of this: an unedited version and then I  
3 had a copy that was edited by Bob Meyers of the  
4 Department of Justice after the independent counsel's  
5 office asked for a copy, and so this is the copy that  
6 Bob Meyers went through and made some notes about  
7 what he felt should be redacted from the independent  
8 counsel because it related to grand jury matters  
9 unrelated to this investigation. So this was the one  
10 you and I used to review this morning.

11 MR. FISHMAN: Right, but there is another  
12 version that contains material that was not within  
13 the scope of the Committee's hearing, the Committee's  
14 investigation and not within the scope of the  
15 independent counsel's investigation involving other  
16 investigative matters unrelated to this that were  
17 eliminated in this version and then we made a few  
18 additional redactions today, as you'll see when you  
19 look at the document. Obviously, if the Committee  
20 has any questions about the earlier version or about  
21 these redactions, we can answer them even now or  
22 after you've had a chance to review the document

1 later.

2 BY MS. FISHER:

3 Q Were you asked to search your files for any  
4 responsive documents to the Committee's document  
5 request?

6 A In preparation for this deposition?

7 Q Or in preparation for the Department of  
8 Justice's production to the Senate special committee?

9 A To be honest, Ms. Fisher, I've had so many  
10 requests to search my files related to this  
11 investigation, I don't remember a specific one for  
12 the Committee, but I have not, I don't remember a  
13 request recently. It would depend on how long ago  
14 the Committee's request was. But I know that I have  
15 searched my files and produced to the Department  
16 everything that pertains to this several times.

17 Q Okay. And that would include all your  
18 handwritten notes --

19 A Yes.

20 Q -- and message pads?

21 A Yes.

22 Q Looking on the first page of the chronology

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12

1 that you provided, at the very bottom of the page is  
2 "8/16, Paula starts"?

3 A Yes.

4 Q And that would refer to Ms. Casey?

5 A Yes.

6 Q And is that the day she started work at the  
7 U.S. Attorney's office or the day that she was  
8 confirmed?

9 A That was the day she started work.

10 Q Prior to Ms. Casey's arrival, did you have  
11 any involvement in issues regarding an RTC criminal  
12 referral relating to Madison Guaranty?

13 A No, I did not.

14 Q Did you learn about it from anyone in the  
15 department prior to her arrival?

16 A I learned about what I now know to be the  
17 referral. I did not learn that it was a referral  
18 until after she started, but I learned about what I  
19 now know to be the referral in general conversation  
20 with Mac Dodson, who was the first assistant under  
21 Chuck Banks, in a comment he made to me over coffee  
22 that a matter had come to our office's attention

1 concerning criminal activity -- potential criminal  
2 activity that might impact Governor Clinton, who was  
3 running for President at the time. That was all the  
4 comment was.

5 I had a second conversation with Mac Dodson  
6 over coffee -- let me back up. That first  
7 conversation would have occurred sometime prior to  
8 the election in November of '92. Other than that, I  
9 can't really date it.

10 I had another conversation with Mac Dodson  
11 sometime after the election but before both he and  
12 Mr. Banks left the U.S. Attorney's office on March  
13 1st of 1993 about the status of that matter he had  
14 mentioned before, and he said that it had been sent  
15 to the Department and they were taking care of it --  
16 something to that effect, that's not an exact quote.  
17 And again, that was just over coffee, general hallway  
18 conversation.

19 There was never any conversation about what  
20 the matter related to, what the allegations were,  
21 where they came from, whether there was any substance  
22 to them, but obviously later I learned that that was,

1 in fact, a referral from the RTC.

2 Q So at that time he didn't tell you that it  
3 related to Madison Guaranty?

4 A No.

5 Q Did you ever have any conversations with  
6 Mr. Banks?

7 A About this matter?

8 Q About this matter.

9 A Before he left the U.S. Attorney's office?

10 No.

11 Q How about since he left the U.S. Attorney's  
12 office?

13 A Well, certainly I have had -- yes, I've had  
14 conversations with Mr. Banks sometime after -- I  
15 don't know when they would have started. I see -- I  
16 run into Mr. Banks not infrequently because his law  
17 office is in the same building as the U.S. Attorney's  
18 office. And I know that he has been asked to give  
19 depositions and been interviewed by the independent  
20 counsel's office, and we have talked about that.  
21 We've talked about the fact that they are interested  
22 in this subject matter, that he has been interviewed,

1 that I have interviewed. General conversation about  
2 the fact that we're both going through a similar  
3 experience with that.

4 Q Did he make any substantive comments to you  
5 regarding these matters other than the procedural  
6 investigation by --

7 A No.

8 Q -- by the committees, various --

9 A No.

10 Q Have you had any conversations with  
11 Mr. Dodson since his departure from the U.S.  
12 Attorney's office?

13 A Certainly. Of the same nature as with  
14 Mr. Banks, and I know that sometime after my  
15 appearance here in D.C. for the independent counsel I  
16 mentioned to Mr. Dodson my recollection about the two  
17 conversations I had had with him. That would have  
18 been about the only substantive conversation he and I  
19 would have had.

20 Q Okay. Other than Mr. Banks and Mr. Dodson,  
21 did you have any substantive conversations with  
22 anyone within the U.S. Attorney's office in the

1 eastern district of Arkansas relating to the criminal  
2 referral, what you now know to be the criminal  
3 referral prior to Ms. Casey's arrival at the U.S.  
4 Attorney's office?

5 A No.

6 Q So you never had any conversations about it  
7 with Mr. Pence?

8 A No, I didn't know it existed.

9 Q Did you have any conversations with  
10 Fletcher Jackson?

11 A No.

12 Q When was your first involvement  
13 substantively with this, the RTC criminal referral  
14 C 0004 related to Madison?

15 MR. FISHMAN: I'm sorry. Can we go off the  
16 record a second.

17 (Discussion off the record.)

18 THE WITNESS: The best I can tell you is it  
19 would have been sometime in September or October of  
20 1993. I can't -- I don't precisely recall when  
21 during that time frame it would have occurred because  
22 there were so many things going on then, both related

1 to this general subject matter and completely  
2 unrelated to this subject matter. I can't fix a  
3 definite time. I know that I saw it prior to  
4 Ms. Casey's letter to Jean Lewis on October 27th and  
5 sometime after I became first assistant on September  
6 7th.

7 BY MS. FISHER:

8 Q And prior to September 7th when you became  
9 first assistant, was it your impression that the  
10 Department of Justice here in Washington, D.C. was  
11 handling the criminal referral?

12 A That is my -- that was my understanding,  
13 but, importantly, I did not know that we were talking  
14 about an RTC referral. I did not know that an RTC  
15 referral existed until after I became first  
16 assistant.

17 Q What did you think it was, just --

18 A Loose hallway talk about some investigative  
19 matter that had been brought to our attention that  
20 Mr. Banks had sent to the Department for their  
21 consideration and not the office's consideration.

22 Q Did you ever hear of any meetings with any

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18

1 employees of the Federal Bureau of Investigation  
2 regarding what you now know to be the RTC criminal  
3 referral prior to September 7th?

4 A No.

5 MR. FISHMAN: Did he hear about meetings  
6 that took place before September 7th or did he hear  
7 about the meetings before September 7th?

8 BY MS. FISHER:

9 Q Did you hear about the meetings prior to  
10 September 7th? Did you know that there were ongoing  
11 meetings?

12 A No.

13 MS. FISHER: Was that still unclear?

14 MR. FISHMAN: Let's go off the record a  
15 second.

16 (Discussion off the record.)

17 BY MS. FISHER:

18 Q When did you become aware of the issues  
19 surrounding the investigation of David Hale, Capital  
20 Management Services, Inc.

21 A That would have been right around the time  
22 that I became first assistant. As I recall,



1 September 7th was the Tuesday following Labor Day,  
2 and Paula had advised me near the end of the  
3 preceding week that she was going to make me her  
4 first assistant. So I knew several days in advance  
5 of my formally taking the position as first assistant  
6 that I would be first assistant sometime in the  
7 middle to the end of the week before that. I know  
8 that I had some awareness of the David Hale  
9 investigation around that time because I was aware of  
10 Paula meeting with Randy Coleman on September 7th,  
11 but did not attend that meeting.

12 Q Was it your understanding that that was a  
13 planned meeting?

14 A I don't know if it was planned or not. My  
15 recollection is more of knowing about the meeting  
16 after it occurred and Paula discussing with me what  
17 had occurred in the meeting after it occurred. I  
18 really can't tell you whether I knew of it in advance  
19 or not.

20 Q And she discussed it with you after the  
21 meeting on September 7th?

22 A Yes.

---

20

1 Q Do you recall being surprised that she had  
2 met with him?

3 A No.

4 Q So --

5 A But I can't -- I may have known about it in  
6 advance, but I don't specifically recall whether I  
7 did or not, and I don't -- I have a vague  
8 recollection that the meeting was later in the day,  
9 so it's very possible she could have mentioned it to  
10 me earlier in the day that he was coming by, but I  
11 don't really recall.

12 Paula and I were just getting to know one  
13 another at that point, and as I said, there were  
14 quite a few things going on with the U.S. Attorney's  
15 office completely unrelated to this matter, not to  
16 mention the least of which was I had no idea what  
17 anybody else in the office was doing. Very busy with  
18 my own cases. She had no idea what anybody in the  
19 office was doing and had been there for little over  
20 two weeks and had spent most of that time talking in  
21 general terms with people we were both trying to  
22 figure out what the office was doing, what it ought

1 to be doing and how to manage it, and in the process  
2 of moving from the courthouse to private space that  
3 had been preplanned and was scheduled for the end of  
4 September.

5 So there was a great deal of stuff to take  
6 care of and an awful lot going on in a short period  
7 of time.

8 Q Do you recall whether you knew that  
9 Mr. Coleman was Mr. Hale's attorney at that time?

10 A I knew that the meeting was about the Hale  
11 investigation.

12 Q Can you tell me what you were aware of  
13 regarding the Hale investigation as of September 7th?

14 A The difficulty -- yes, I will tell you  
15 that. The difficulty I have is pinning it to a  
16 certain date. I know that -- I know that shortly  
17 after September 7th I became very involved in matters  
18 related to the Hale investigation. Exactly when  
19 before September 7th, or if I had any involvement  
20 before September 7th, I can't tell you. I do know  
21 that around the time that I was appointed first  
22 assistant I sent a memo to all of the criminal

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1 attorneys in the office and maybe the civil attorneys  
2 too, I don't recall that very much, asking them to  
3 make a list of what they considered their most  
4 significant cases and to provide it to me. And I did  
5 that as a way to try to determine, both for myself  
6 and for Ms. Casey's benefit, what the office was  
7 working on that she needed to be apprised of. That  
8 this general matter, Hale and later Madison Guaranty,  
9 was one of the matters that Fletcher Jackson advised  
10 me he was working on. I don't recall precisely when  
11 that occurred except that it was in the same time  
12 frame of early September -- and I don't recall  
13 whether that occurred before Mr. Coleman met with  
14 Ms. Casey or slightly after, but it would have been  
15 around the same time frame.

16 Q Did you ever have direct discussions with  
17 Mr. Jackson regarding the Hale investigation?

18 A Yes.

19 Q Were they prior to September 7th or after?

20 A I know I had them after. I don't recall  
21 having any prior, although I may have, but I just  
22 simply don't -- I had so many conversations with him

1 during September and October about all of these  
2 matters, I don't remember when they began precisely.  
3 But they would have been after I had been notified  
4 that I was first assistant because I had no reason to  
5 have a conversation with him about any of his  
6 investigative matters until I became appointed first  
7 assistant.

8 Q Getting back to the meeting that Ms. Casey  
9 had with Mr. Coleman on the 7th, you testified that  
10 she discussed the meeting with you the next day; is  
11 that correct?

12 A I don't know if it was the next day. It  
13 may have been later that afternoon.

14 Q That same day?

15 A Yes.

16 Q Can you recall for me what she told you  
17 about the meeting?

18 A Generally she told me that Mr. Coleman had  
19 asked for immunity for Mr. Hale, and asked also to  
20 delay our ongoing investigation and forthcoming --  
21 what we anticipated to be a forthcoming indictment  
22 and that she had declined that approach. They had

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1 also had a conversation about a misdemeanor and that  
2 she had declined that as well. She asked me -- she  
3 was trying to become familiar with many of the  
4 Department of Justice policies and practices at the  
5 time, and what the preexisting U.S. Attorney's office  
6 policy and practice had been, and she was seeking my  
7 input into whether I thought the approach she had  
8 taken with Randy Coleman was a correct one, and I  
9 indicated to her that I thought under the  
10 circumstances that it very much was correct to reject  
11 immunity or a misdemeanor and to insist that Mr. Hale  
12 consider pleading to a felony.

13 Q What did Ms. Casey tell you about the  
14 substantive allegations against Mr. Hale at that  
15 time?

16 A I don't know if the information I had about  
17 the substantive allegations came directly from  
18 Ms. Casey or would have come from Mr. Jackson, but I  
19 knew that there were allegations concerning Mr. Hale  
20 first and foremost concerning an SBA fraud that  
21 involved a fellow by the name of Fitzhugh and a  
22 fellow by the name of Matthews that Mr. Jackson

1 anticipated presenting for indictment at the  
2 September grand jury. And I knew that Mr. Hale had  
3 potential criminal liability for other matters not  
4 specifically related to this particular fraud case  
5 that may have some bearing with Madison Guaranty. So  
6 I knew that Mr. Hale was facing the possibility of  
7 several indictments for different types of fraud.

8 Q Were these possible several indictments  
9 against Mr. Hale discussed during this meeting you  
10 had with Ms. Casey about her meeting with  
11 Mr. Coleman?

12 A I don't specifically recall.

13 Q In what context was it, then, that you  
14 provided your opinion that she made the right  
15 decision by refusing his plea for either a  
16 misdemeanor or immunity?

17 A I knew at the time that Paula -- my best  
18 recollection is at the time that Paula and I had  
19 discussed that I had some understanding of this  
20 investigation, but it is awfully difficult to  
21 remember over two years ago exactly when I learned  
22 all that I did learn because it all is crammed in a

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1 very short period of time.

2 I know that by September 15th, which was  
3 the first written communication from Mr. Coleman, I  
4 had learned a great deal about what was going on. To  
5 tell you how much I knew on September 7th as opposed  
6 to September 15th, I just simply can't. I just don't  
7 recall when in that time frame I learned each piece  
8 of information.

9 Q So do you recall anything about what  
10 information you had during this meeting with  
11 Ms. Casey?

12 A On September 7th, I can't honestly tell you  
13 I specifically remember what I precisely knew then as  
14 opposed to a week later, no. This was an ongoing  
15 process. I mean, this became a matter that probably  
16 was discussed, if not daily, certainly several times  
17 a week for most of September and most of October, and  
18 so we're talking about more conversations than I  
19 could ever possibly recount or separate.

20 Q Do you recall at this first meeting on  
21 September 7th with Ms. Casey when you were discussing  
22 her meeting with Mr. Coleman what else was it that



1 Mr. Coleman said to Ms. Casey?

2 A I know that there was some -- well,  
3 actually I don't know that. I don't know whether in  
4 that meeting or not there was any discussion about  
5 Mr. Hale having information -- well, yes, there had  
6 to be some discussion about Mr. Hale having  
7 information he wanted to provide or there wouldn't  
8 have been any reason to discuss the issue of  
9 immunity. But there were no specifics. I remember  
10 that because that was fairly important.

11 I felt that one of the things that  
12 Ms. Casey was looking to me for and one of the  
13 reasons -- at least as I believed, that Mr. Casey had  
14 selected me as first assistant is because I had 20  
15 years' experience with the Department of Justice and  
16 with the criminal process, and that she was looking  
17 for my advice and counsel that had come from that 20  
18 years of experience on how you handle things like  
19 this. And I know that I told her that, first of all,  
20 you don't give immunity without finding out what  
21 you're getting, and there's a procedure and process  
22 by which we could go through that, and that generally

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1 if you're talking about using somebody as a witness,  
2 particularly somebody who himself is a public  
3 official who is apparently going to accuse other  
4 significant persons of criminal wrongdoing, that it's  
5 far better for them to have admitted their  
6 involvement and pled guilty to their role in the  
7 offense for their credibility to a jury than to be an  
8 immunized person, and that to go too lightly on  
9 somebody as a witness in terms of misdemeanor versus  
10 felony as opposed to a sentencing consideration by  
11 motion to reduce their potential sentence, that I  
12 thought that proposed approach by Randy Coleman would  
13 be a mistake because it would undercut the very  
14 credibility you wanted to bolster to use the  
15 witness. That was the tenure of our conversation.  
16 But it was less about the specific substance than it  
17 was about the overall general approach.

18 Q Do you recall whether Mr. Jackson had had  
19 conversations about a possible plea agreement with  
20 Mr. Coleman prior to Mr. Coleman's visit or meeting  
21 with Ms. Casey on September 7th?

22 A Did I know of any at the time or do I know



1 of any now?

2 Q Do you know of any now?

3 A I have been told by Mr. Coleman and  
4 Mr. Jackson that they had discussed that matter prior  
5 to September 7th, but I had no knowledge that those  
6 conversations had occurred at the time.

7 Q What is your knowledge as to the substance  
8 of those conversations between Mr. Coleman and  
9 Mr. Jackson prior to September 7th?

10 A My understanding from both what Mr. Coleman  
11 said to me and what Mr. Jackson said to me is they  
12 were general discussions exploring the possibility --  
13 that they were along similar lines as Mr. Coleman's  
14 discussion with Mr. Casey, and that is that  
15 Mr. Coleman wanted on behalf of Mr. Hale essentially  
16 a free ride and promised -- and represented that his  
17 client had important information about important  
18 people. And the conversations, as best I know, did  
19 not get any more specific than that. Although I now  
20 know there may have been a representation that  
21 Mr. Hale could provide information about Mr. Tucker.

22 Q And when was that representation made, that

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1 Mr. Hale could provide information?

2 A My understanding from Mr. Jackson is that  
3 that was made sometime in their meetings prior to  
4 September 7th. That's my understanding today.  
5 That's not my knowledge in 1993.

6 Q As of your discussion with Ms. Casey -- as  
7 of the time of your discussion with Ms. Casey on  
8 September 7th or September 8th after her meeting with  
9 Mr. Coleman, did you or she have any knowledge about  
10 Mr. Hale's allegations concerning Governor Tucker?

11 A Any knowledge of any specifics? We never  
12 received any specifics from David Hale, ever.

13 Q Had Mr. Coleman mentioned that Mr. Hale  
14 might have information relating to Mr. Tucker?

15 A In my dealings with Mr. Coleman he never  
16 mentioned any specific thing that David Hale could  
17 provide about anybody.

18 Q That wasn't exactly my question, but as of  
19 September 7th, did you or Ms. Casey have any  
20 knowledge that Mr. Hale had indicated -- Mr. Coleman  
21 had indicated that Mr. Hale had information about  
22 Governor Tucker?

1 A I have no knowledge of that.

2 Q Did Ms. Casey have knowledge?

3 A Not that she indicated to me.

4 Q When was it that you first learned that

5 Mr. Hale had -- Mr. Coleman had alleged that Mr. Hale  
6 had information concerning Governor Tucker?

7 MR. COLE: Just to be clear, Mr. Tucker  
8 wasn't governor then.

9 THE WITNESS: No, he wasn't.

10 BY MS. FISHER:

11 Q Jim Guy Tucker.

12 A I think he was lieutenant governor at the  
13 time. When did I learn that supposedly Mr. Coleman  
14 had told Mr. Jackson that Mr. Hale could provide  
15 information about Mr. Tucker?

16 Q Mr. Jackson or anyone else?

17 A Well, my sole source of that information is  
18 from a conversation with Mr. Jackson after he  
19 returned from his deposition here last week.

20 Q Okay. Did you play any role in the seizure  
21 of documents at Capital Management Services on July  
22 20th?

1 A No.

2 Q After the documents were seized at Capital  
3 Management on July 20th, 1993, where were those  
4 documents taken?

5 A I have no idea.

6 Q Did you come to learn later where the  
7 documents were stored?

8 A I never -- no, I never asked.

9 Q At some point, did there come a time when  
10 you reviewed the documents?

11 A No.

12 Q Did there come a time when you reviewed the  
13 criminal referral sent by the Small Business  
14 Administration related to Capital Management?

15 A No.

16 Q Do you recall after the September 7th  
17 meeting between Ms. Casey and Mr. Coleman the next  
18 meeting or the next contact between anyone at the  
19 U.S. Attorney's office in the eastern district of  
20 Arkansas with Mr. Coleman or Mr. Hale?

21 A I don't know whether there were -- the next  
22 contact that I'm aware of that I recall at this time

1 would have been a letter that we had received from  
2 Mr. Coleman dated September 15th.

3 Q So you don't recall any contact between  
4 Ms. Casey and Mr. Coleman between September 7th and  
5 September 15th?

6 A I don't recall any at this time, but as I  
7 said before, there was so much going on. Whether  
8 there were phone calls between Ms. Casey and  
9 Mr. Coleman that Paula told me about at that time, I  
10 don't recall at this time. It was my understanding  
11 and her general practice with me and my general  
12 practice with her when something significant  
13 concerning this matter as well as other matters that  
14 were deemed to be significant in the office occurred,  
15 that we kept each other apprised of those, so -- but  
16 I don't recall any specific phone conversation  
17 between the 7th and the 15th. I did not have any.

18 Q After the September 15th letter received  
19 from Mr. Coleman, what do you recall was the next  
20 contact?

21 A We responded to that letter by a letter  
22 dated September 16th, I believe.

1 Q Were there any oral communications or  
2 meetings around or about September 15th or September  
3 16th?

4 A Not that I recall.

5 MR. FISHMAN: With Mr. Coleman?

6 BY MS. FISHER:

7 Q Yes.

8 A With Mr. Coleman, no, not that I recall.

9 Q After September 7th or September 8th, what  
10 action were you involved in relating to the  
11 investigation of Mr. Hale and Capital Management  
12 Services?

13 A After that, up to any particular time  
14 period, just --

15 Q Generally.

16 A -- at some point between that time,  
17 September 7th, and ultimately when Ms. Casey recused  
18 on November 5th, I had essentially taken over  
19 management of that case --

20 Q From Mr. Jackson?

21 A Yes; more related to the Madison Guaranty  
22 part, and that came about in my efforts to learn what

1 it was that we were investigating. I became aware  
2 that Mr. Jackson and the agents from the FBI that  
3 were investigating it were not in agreement on  
4 approach and methodology about the investigation, in  
5 fact, "not in agreement" is putting it very mildly.

6 Q You want to stop there and explain?

7 A Sure.

8 Q And this is the investigation of Madison or  
9 the investigation of Capital Management?

10 A This is more the investigation of Madison,  
11 but the two were not separated at that time.

12 Q Up until that time was Mr. Jackson  
13 controlling both investigations, or the joint  
14 investigation -- I don't know how you would refer to  
15 it, but the investigation of Madison and Capital  
16 Management?

17 A My understanding was that Mr. Jackson was  
18 viewing those as two prongs of one investigation as  
19 opposed to two separate matters; why, I don't know.  
20 But I know that he was responsible for that matter,  
21 having been assigned responsibility by -- I'm not  
22 sure. I mean that all happened before I became first

1 assistant. But that is a matter he identified to me  
2 as a matter he was working on, that he identified to  
3 me as a significant matter and he identified those as  
4 related.

5 And my understanding from him was that he  
6 thought that the investigation of Capital Management  
7 and the SBA fraud related to Hale, would lead into an  
8 investigation of Madison Guaranty. And at the time  
9 that I was briefed on the nature of the  
10 investigation, the FBI had specific -- had identified  
11 specific transactions at Madison Guaranty that they  
12 felt merited investigation and gave me a briefing on  
13 those matters, gave me a briefing on potential  
14 subjects of those matters and the investigative  
15 course they wished to take on those matters.

16 I was interested in that and more concerned  
17 about that, and not very interested in how that came  
18 about frankly. I didn't particularly care how the  
19 FBI had acquired the information they had at that  
20 point and wanted to do the investigation. My focus  
21 was how to facilitate that investigation and direct  
22 it.

1 Q Could you tell me what your understanding  
2 was of the disagreement in approach by Mr. Jackson  
3 and the FBI?

4 A Yes. Were you the person who took  
5 Mr. Jackson's deposition?

6 Q No, I was not.

7 A You have not had the pleasure of meeting  
8 Mr. Jackson. It would be easy to explain if you had  
9 met him. Fletcher is -- those who have met him are  
10 chuckling, but Fletcher is a person that focuses on  
11 matters very quickly and he is someone, I guess I  
12 would use the word to describe him, a minimalist. He  
13 is not one that wants to spend a lot of time dealing  
14 with a lot of records. And he is also somewhat of a  
15 loner in his approach to things. He prefers to work  
16 alone rather than with people.

17 The FBI's concern, as expressed to me, was  
18 that Fletcher was narrowing the request for documents  
19 too specifically too soon for their comfort, and  
20 their view was that the matter ought to be approached  
21 much broader. Fletcher's view of the FBI was that  
22 they were wasting time with a lot of irrelevant

1 matters on the fringes, that he could get to the  
2 heart of the matter in a much more laser-like manner  
3 than the FBI approach.

4 My perception was that both Fletcher and  
5 the FBI had the same goal, that is to conduct an  
6 effective investigation, but they viewed the path to  
7 get there very, very differently.

8 Q And was this regarding documents  
9 requested -- well, from whom?

10 A RTC.

11 Q So this is related to the investigation of  
12 matters concerning Madison?

13 A Yes.

14 Q And did they have a difference in opinion  
15 on the approach to matters involving Capital  
16 Management?

17 A No, they didn't. The Capital Management  
18 part of this really at that point only concerned  
19 Randy Coleman's efforts to keep our office from  
20 indicting David Hale. My understanding of that  
21 matter, when I became familiar with it, was that that  
22 investigation was essentially done, that they pretty



1 much had the documents and the material they needed.  
2 There was some difference of opinion on all of  
3 whom -- all of the people who should be indicted on  
4 that unrelated to David Hale. There was a difference  
5 of opinion about one of the other defendants between  
6 the FBI and Mr. Jackson, but that that investigation  
7 was done, and so the only question there was whether  
8 we would proceed on our timetable that Mr. Jackson  
9 had laid out to proceeding in September or not. The  
10 other longer-term investigation related to Madison.

11 Q And the meeting that you had with the FBI  
12 agents regarding these problems and other issues  
13 relating to Madison, could you place a time for  
14 that? And I don't know if it appears on your  
15 chronology.

16 A There may be several references to it. It  
17 was more than one meeting.

18 Q Okay.

19 A I met with them numerous times between  
20 mid-September and November 5th concerning these  
21 matters. As the status of the case changed, the  
22 purpose of the meetings changed and we had different

1 problems and different issues to deal with at  
2 different times. So there were many meetings I had  
3 with the FBI agents concerning this.

4 Q Who were the FBI agents primarily  
5 responsible for these matters, as you recall?

6 A David Reign was the case agent who was  
7 assigned. His supervisor at the time was Steve  
8 Irons, and I met both with Steve Irons and David  
9 probably -- well, probably my contact with them was  
10 equal. Sometimes those meetings would be with them  
11 together. Sometimes I would have either a phone  
12 conversation or meeting with one and not the other,  
13 depending on what specifics we were dealing with and  
14 whether we were dealing with a general matter of how  
15 we were going to proceed, or had some specific thing  
16 that we had to take care of and who called me.

17 And a financial analyst from the FBI by the  
18 name of Gretchen Hall was also assigned to the  
19 matter. She attended one, maybe two meetings.

20 Q What was your understanding of the scope of  
21 the matters they were looking into at Madison at that  
22 time, September to November?

1 MR. FISHMAN: Off the record for a second.

2 (Discussion off the record.)

3 BY MS. FISHER:

4 Q Why don't you tell me in general terms what  
5 you understood to be the scope of the investigation  
6 relating to Madison Guaranty at that time, September  
7 to November, and then if you would, please tell me  
8 how it changed since you indicated that it changed  
9 over time?

10 A Well, the scope never really changed. The  
11 purpose of the meetings changed depending on events  
12 that had transpired. But the scope, as I understood  
13 it, from the beginning, was very widespread. The FBI  
14 was interested in looking at all matters concerning  
15 fraud related to Madison, and they had identified  
16 numerous specific transactions that they felt merited  
17 investigation and they were interested in looking at  
18 those.

19 Q When do you recall was your first meeting  
20 with the FBI relating to Madison matters, how soon  
21 after you became first assistant would you say was  
22 your first meeting?

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1 A Oh, brother.

2 Q A week, two weeks?

3 A I really -- I'm not real sure. I know that  
4 I had met with them prior to -- I know that I'd met  
5 with them prior to September 24th or had at least  
6 talked with either David Reign or Steve Irons prior  
7 to September 24th, but I really --

8 Q Are you basing that on this September 24th  
9 meeting with Irons and Whitehead?

10 A Yes.

11 Q Is that what you are using as a reference?

12 A Yes, I am. But I really can't tell you for  
13 sure when I met and talked with them or met or talked  
14 with them for the first time. I knew both David and  
15 Steve from other investigations. I had worked with  
16 them on cases that I had worked on where they had  
17 been the agents, or in Steve's case, the supervisor.  
18 It was not uncommon for me to talk to them, and I  
19 certainly would have talked to them had I seen them  
20 in the office.

21 And it was -- and I had made it known when  
22 I became first assistant -- actually the agents knew

1 this about me before I became first assistant that I  
2 was very receptive to problems they perceived that  
3 they had with how things were handled. And they  
4 could come, either use me as a sounding board to let  
5 off their steam, or certainly after I became first  
6 assistant, that I was very interested in whether they  
7 felt the other assistants were doing what they were  
8 supposed to be doing.

9 So it was not uncommon for agents to call  
10 me and bring to my attention a problem they were  
11 having with an assistant in the office. It's my  
12 recollection that my first conversation with either  
13 David Reign or Steve Irons was of that nature where  
14 they brought the issue to my attention that they were  
15 in disagreement with Fletcher Jackson about the  
16 approach on subpoenas that had been issued, and the  
17 response to those subpoenas.

18 Q Did they mention to you any other subpoenas  
19 than the one to the RTC?

20 A There were several subpoenas to the RTC at  
21 that time.

22 Q Several subpoenas to one agency?

1 A Yes. I was not aware of any problems with  
2 anything other than trying to get records from the  
3 RTC.

4 Q Tell me, if you would, what the FBI's view  
5 of those problems was.

6 A The FBI's view of those problems as  
7 expressed to me was that the records they needed to  
8 conduct their investigation were in the hands of the  
9 RTC, that the RTC would not relinquish those records  
10 to the FBI so that the FBI could conduct their  
11 investigation, and the FBI was very frustrated that  
12 they could not get access to the information to start  
13 the investigation.

14 Q On your chronology, you have "September 7th  
15 phone conversation Jean Lewis RTC"?

16 A Yes.

17 Q Can you tell me what you recall about that  
18 phone conversation?

19 A Yeah, I recall specifically what it was  
20 about. It does not relate to Whitewater. It related  
21 to a subpoena that I had issued in another  
22 investigation, and she called me wanting some

1 identification data of the persons whose accounts we  
2 had subpoenaed in an effort to figure out which  
3 accounts it related to.

4 It's not -- it was not a Madison account.  
5 It was another financial institution in Arkansas and  
6 I referred her to the IRS agent that was working with  
7 me on that case to get the detailed information about  
8 the account holders that she wanted.

9 Q Did the FBI express to you the reason the  
10 RTC would not relinquish records to them?

11 MR. FISHMAN: Do you mean --

12 MS. FISHER: To the FBI.

13 MR. FISHMAN: Off the record for a second.

14 (Discussion off the record.)

15 BY MS. FISHER:

16 Q If there was a request for records other  
17 than a subpoena you can tell me about that too,  
18 please.

19 A There may have at one time been a request  
20 for records without a subpoena. At the time that I  
21 remember dealing with the issue, subpoenas had been  
22 issued to the RTC for the records, and they were

1 still not forthcoming. And as explained to me by the  
2 FBI agents, the explanation they had gotten from the  
3 RTC was that the RTC needed these records to complete  
4 criminal referrals, and that was not a matter that  
5 sat well with them or me, because at that point we  
6 were attempting to do the investigation, and it did  
7 not make a lot of sense to me to hold up the  
8 investigation for pieces of paper to request us to do  
9 the investigation we already wanted to do.

10 Q In these meetings in September prior to  
11 September 24th with FBI agents, was the RTC criminal  
12 referral, or what you now know to be the RTC criminal  
13 referral C 0004 discussed?

14 A I want to -- not that I recall -- well, I  
15 don't recall when I first discussed it. But  
16 something you asked in your question, I want to make  
17 sure that we're not having a misunderstanding. I'm  
18 describing to you now meetings that didn't  
19 necessarily occur before the 24th of September.

20 Q Right.

21 A Okay. The meetings I just described to you  
22 in terms of my conversations with the FBI began

1   sometime in around the middle of September and  
2   continued all the way through the time that we got  
3   the referrals now known as the nine referrals from  
4   the RTC sometime in around the third week of  
5   October. So the conversations I just described to  
6   you occurred over that period of four to five weeks  
7   and not necessarily prior to September 24th.

8           But with regard to the first referral, it  
9   would have been someplace in the course of these  
10   conversations with the FBI that I became, as best I  
11   recall, that I became aware that there had been a  
12   prior referral, because there would have been some  
13   reference to it. Although I also recall that I  
14   learned of the first referral when Ms. Casey brought  
15   to my attention a conversation she'd had with legal  
16   counsel of the Executive Office concerning the status  
17   of the first referral and had been asked by the  
18   Executive Office to notify the RTC of the status of  
19   that referral. Those would have occurred sometime  
20   around the same time, which would have been sometime  
21   around the end of September, first part of October as  
22   I recall.

1           Q   Do you recall whether, during these initial  
2   meetings with the FBI relating to Madison, that your  
3   recollection was refreshed regarding your previous  
4   conversations with Mr. Dodson about the Madison  
5   investigation or the matter that had been sent to  
6   main Justice?

7           A   I made no connection between those at the  
8   time. It was not until after I had seen and read the  
9   first referral that I made a connection between that  
10   and my prior conversations with Mr. Dodson.

11          Q   When was it that you first obtained and  
12   read the first criminal referral --

13          A   Again --

14          Q   -- relating to Madison?

15          A   Again, it would have been sometime around  
16   this same time frame. My best recollection is end of  
17   September, first part of October.

18          Q   And that was the first time that you had  
19   read it?

20          A   Yes.

21          Q   Is that the first time that you had  
22   substantive discussions about the actual substance of



1 the referral?

2 A I don't know that I -- well, yes, as best I  
3 can recall. I'd certainly by that time -- by the  
4 time I read the first referral, I had already had  
5 substantive discussions with the FBI agents  
6 concerning allegations that they felt merited  
7 investigation concerning Madison. But there was no  
8 connection, in either the conversation or in my mind,  
9 between what they were laying out as allegations that  
10 they wanted to investigate and felt should be  
11 investigated and the things talked about in the first  
12 referral.

13 In other words, I did not get any sense  
14 from reading the first referral that it and the  
15 allegations the FBI wanted to investigate had any  
16 relation to one another.

17 Q Well, I guess I would ask you to be a  
18 little bit more specific at this point about what  
19 your understanding was of what the FBI was  
20 investigating at that time relating to Madison.

21 A All right. I think I can do that in a  
22 general way without talking about specific

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1 transactions.

2 The FBI sat down and talked about the very  
3 specific transactions that had occurred at Madison  
4 that they wanted to look at, and I do recall the name  
5 of some of those, but as I understand because of, as  
6 I'm told here by department counsel, concerning  
7 the -- I see, I shouldn't specifically mention those.

8 MR. COLE: Why don't we go off the record.

9 (Discussion off the record.)

10 MR. FISHMAN: Just so the record is clear,  
11 we've had an extended off-the-record discussion among  
12 staff and majority and the minority, the witness and  
13 myself attempting to have the witness answer the  
14 question without inadvertently impinging on pending  
15 matters being handled by the independent counsel.

16 I think we've had a productive discussion  
17 off the record and I think Mr. Johnson may be able to  
18 answer your question without running that risk at the  
19 moment. Obviously, if you have more specific  
20 questions that you need to ask, please do so and we  
21 will attempt to again deal with these concerns in a  
22 way that satisfies the Committee.

1 BY MS. FISHER:

2 Q Thank you.

3 A What I was attempting to relate to you is  
4 that the FBI description of the investigation that  
5 they wanted to conduct and my reading of the first  
6 referral which occurred later, I know that in  
7 relation to one another the FBI outlined their  
8 investigation concerning Madison to me before I ever  
9 read what I now know to be the first referral from  
10 Madison, or concerning Madison rather.

11 When I read the first referral concerning  
12 Madison, there was not an evident connection to me  
13 between it and what the FBI wanted to look at.  
14 Although some of the same matters were referenced,  
15 the approach in the first referral, as I remember it,  
16 was to focus on James McDougal's manipulation of a  
17 number of accounts on which he had signature  
18 authority that had some relationship to projects that  
19 the bank had funded.

20 And as opposed to that, the FBI approach in  
21 the investigation they outlined to me was concerning  
22 fraudulent conduct that may have been involved in the

1 initial funding of projects and the subsequent  
2 treatment of those kinds of projects with regard to  
3 the bank, and so there may have been some overlap.

4 The fundamental approach was entirely  
5 different, and I had never seen a referral either  
6 before or subsequent, either from the RTC or any  
7 other banking institution, that had focused or  
8 focused on an internal check kite. I was much more  
9 familiar with fraud investigations related to  
10 institutions, either failed institutions or ongoing  
11 active institutions that concerned themselves with  
12 loan transactions and whether the acquisition,  
13 development, and repayment of those loan transactions  
14 were done in a fraudulent manner.

15 MS. FISHER: Can we go off the record for a  
16 second. Would now be a good time for a break?

17 (Recess.)

18 BY MS. FISHER:

19 Q I believe we were discussing your analysis  
20 of whether there was a connection between the first  
21 referral that you later saw and the ongoing FBI  
22 investigation related into Madison, in general

- 1 terms. I'm not trying to be specific.  
2 A Yes.  
3 Q And I believe that you characterized the  
4 RTC criminal referral C 0004 as a referral that was  
5 focused on a check kite; is that your recollection?  
6 A I know that sometime after I read the  
7 referral, I read the memorandum done by somebody in  
8 the Department of Justice referral to it as a check  
9 kite. What I remember in reading the referral is  
10 that it focused on the manipulation of bank accounts  
11 within the control of James McDougal, and that was  
12 not the type of referral that I had ever seen before  
13 or seen since.  
14 Q When you read the referral, what else did  
15 you read, did you read the supporting documentation?  
16 MR. FISHMAN: Do you mean by that the  
17 exhibits?  
18 BY MS. FISHER:  
19 Q The exhibits to the referral, that is what  
20 I am -- thank you.  
21 A No.  
22 Q What else did you read?
- 

- 1 A I know that I've read different things at  
2 different times. At what time frame are you talking  
3 about?  
4 Q The end of October, beginning -- or the --  
5 I would have to check.  
6 A End of September.  
7 Q End of September, beginning of October.  
8 Thank you.  
9 A If I may put that in context, when I read  
10 the referral, it was after -- as best I recall, it  
11 was after Paula Casey had been asked by the executive  
12 office to notify the RTC of the status of that  
13 referral. As I understood it, somebody from the  
14 legal counsel's -- legal counsel of the executive  
15 office for the Department of Justice had explained to  
16 Paula Casey that they had received numerous phone  
17 calls from Jean Lewis about the status of that  
18 referral.  
19 Paula and I wondered why it was that Jean  
20 Lewis was calling the Department of Justice but had  
21 never called our office about the status of that  
22 referral, and had never talked to either herself or

1 myself about the status of that referral. And she  
2 and I reviewed the referral in the context of already  
3 having an ongoing investigation concerning Madison in  
4 which we were trying to get records from the RTC, and  
5 in the context of representations through the FBI  
6 that eight or nine additional referrals would be  
7 forthcoming concerning Madison, which was the  
8 explanation the RTC had given as to why they had not  
9 complied with our subpoenas. And in that context,  
10 the first referral didn't seem to me to be something  
11 of much importance.

12 Q Other than the referral itself -- how  
13 closely did you read it, the first referral, when you  
14 read it in this context after --

15 A I read it through once. I didn't sit down  
16 and attempt to detail it out.

17 Q Do you recall approximately how long it  
18 took you to read it?

19 A No, I don't.

20 Q Did you read any other supporting  
21 documentation -- you've already said that you didn't  
22 read the exhibits. Were there any other documents

1 that you read in this context?

2 A At that time?

3 Q Yes, at that time.

4 A No, not that I recall. I may have read the  
5 memorandum done by Mark MacDougall concerning his  
6 analysis of the referral. I know I have read it  
7 sometime before now. I may have read it at that  
8 time, but again, I don't specifically recall whether  
9 I read it at the time I first read the referral.

10 MR. COLE: Alice, could I ask one  
11 question?

12 MS. FISHER: Absolutely, Lance.

13 MR. COLE: Since it's a convenient time.

14 EXAMINATION

15 BY MR. COLE:

16 Q Do you recall, Mr. Johnson, whether you  
17 reviewed Mr. Banks's original letter to Mr. Pettus on  
18 the referral?

19 A I recall that I did not.

20 Q That you did not, you had not read that  
21 letter at that time?

22 A I read the correspondence that Mr. Banks

1 had with Mr. Pettus and with the Department for the  
2 first time on the day before I was interviewed by the  
3 independent counsel's office in May of 1995.

4 MR. COLE: Thank you.

5 EXAMINATION (Continued)

6 BY MS. FISHER:

7 Q When you went to get the referral to read  
8 it, was it in a particular file? And I'm talking  
9 about the first referral in the context of when you  
10 went to read it sometime in late September, early  
11 October.

12 A It was given to me by Ms. Casey.

13 Q By itself --

14 A It was in --

15 Q -- or in a file?

16 A It was in the brown folder that the RTC  
17 puts their referrals in. It was not -- it was not in  
18 a case file.

19 Q Are you aware whether there was a case file  
20 relating to the criminal referral at the eastern  
21 district of Arkansas at that time?

22 A By the time I read the referral or around

1 the time I read the referral, I was aware of all the  
2 cases, criminal cases that were opened, and there was  
3 no case identified to me as relating to the first  
4 referral.

5 Q Do you have any knowledge at this time  
6 where any prior correspondence relating to the first  
7 referral was located within the U.S. Attorney's  
8 office?

9 A My understanding is that it was kept in  
10 what we referred to as the vault which is really a  
11 file room that's kept locked. I know that's where  
12 all the material is now, is there.

13 Q But you believe that there was a file  
14 related to correspondence --

15 A I don't know if there was a file related to  
16 correspondence. I mean I know what's there now.

17 Q Okay. Trying to date it back to that  
18 period of time --

19 A I have no idea what was maintained or  
20 where.

21 Q When Ms. Casey gave you the referral in the  
22 brown folder from the RTC, did she also give you the



1 MacDougall memo at that same time?

2 A I don't -- I don't recall specifically. I  
3 know I have read the MacDougall memo. When I was  
4 preparing for my interview at the independent  
5 counsel's office in May of this year and retrieved  
6 our retained copies of documents that had been  
7 provided to the independent counsel's office, in  
8 order to refresh my memory, I looked at the first  
9 referral again, and at that time saw documents I had  
10 never seen before, specifically correspondence  
11 between Mr. Banks and the FBI and the Department.  
12 And I also saw at that time the Mark MacDougall memo;  
13 my recollection was I had read the MacDougall memo  
14 before.

15 Q At the time when Ms. Casey give you the  
16 first criminal referral, did she indicate to you that  
17 she had read it?

18 A Yes, she had read it.

19 Q Did she indicate to you whether she had  
20 read the exhibits to the referral?

21 A I don't recall her saying either way  
22 whether she had read the exhibits. In my view, there

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1 would have been no purpose to review the exhibits at  
2 that time.

3 Q And that's why your view is that there  
4 would be no purpose in reviewing the exhibits?

5 A Of the first referral?

6 Q Yes.

7 A The time I looked at the first referral, my  
8 understanding was housekeeping task had been left  
9 undone, and that is to simply inform the RTC of the  
10 status. We had an extensive, full-scale  
11 investigation of activities of fraud related to  
12 Madison Guaranty which we were trying to undertake.  
13 We were expecting and awaiting a number of new  
14 referrals from the RTC specifically related to  
15 Madison that I know that the Foster agents had had  
16 conversations with the investigators at RTC about, at  
17 least as they represented to me, and no one except  
18 Jean Lewis calling the executive office seemed to  
19 care about the first referral or seemed to think that  
20 the first referral was useful.

21 Q The first referral hadn't been formally  
22 declined at that point, had it?

1 A My understanding now or then?

2 Q You can give me your understanding then and  
3 now.

4 A My understanding now is that it hadn't. My  
5 understanding then was that it had.

6 Q So your understanding, as of the time that  
7 Ms. Casey gave you the referral, was that it had  
8 already been declined?

9 A Right.

10 Q So why was it that she gave you the  
11 referral to read?

12 A Because Jean -- as I understood it, Jean  
13 Lewis was complaining that the RTC, and specifically  
14 her, had never been notified of what action had been  
15 taken on the first referral, and the executive office  
16 of the Department of Justice was asking Paula to  
17 notify the RTC, and I considered it a housekeeping  
18 matter.

19 Q Is it your understanding that the someone  
20 from the main Justice had told Ms. Casey that the  
21 matter had been declined?

22 A I don't know if someone made that

1 representation to Ms. Casey or not.

2 Q Is your understanding that the matter had  
3 been declined in this time period that we've been  
4 discussing, was that understanding coming from your  
5 discussions with Ms. Casey or some --

6 A No.

7 Q Where did you get that understanding?

8 A I think Ms. Casey and I both had the same  
9 understanding, but I don't -- so I don't remember my  
10 understanding coming from her.

11 Q What is the basis for that understanding?

12 A I can't -- I've been asked that question  
13 before, and I can't exactly tell you because I cannot  
14 pinpoint that understanding. It may have come from  
15 several sources, some from my conversations with Mac  
16 Dodson, conversations at that time with the FBI about  
17 the investigation that was being conducted, but I  
18 can't tell you that anybody in specific represented  
19 to me that it had been declined or whether it was my  
20 sense of the status of the thing. I don't know.

21 Q And these discussions with Mac Dodson  
22 regarding whether the matter had been declined, would

1 that have been your previous discussions over coffee  
2 while he was in the office?

3 A Those are the only two conversations I had  
4 with Mac Dodson about it.

5 Q I believe that you testified that your  
6 discussion with Mac -- the extent of your discussion  
7 with Mac Dodson was that he had sent the referral to  
8 the Department of Justice and they were taking care  
9 of it?

10 A That's right.

11 Q How would it be from that discussion you  
12 would have the understanding that the matter had been  
13 declined?

14 A It would only be in the context of my  
15 conversations with people that were familiar with the  
16 first referral which would have, at that time, either  
17 been from my reading of the MacDougall memo or would  
18 have been from the conversations I had with the FBI  
19 agents about the investigation they did want to do  
20 concerning Madison.

21 If I can put this in the context of my  
22 frame of reference at that time, I had two agents

1 that I was familiar with. I had one that I had in  
2 particular, David Reign, worked with on extensive  
3 investigations. They were both agents I had a great  
4 deal of respect for, who I thought had a lot of  
5 common sense and a lot of aggression and who I  
6 trusted. I don't have that sense of security with  
7 all agents I've worked with, but I considered these  
8 two agents to be very good, and their representations  
9 to me of what they felt merited investigation at  
10 Madison meant a great deal more to me than what an  
11 RTC investigator wrote on a piece of paper that other  
12 people had not been impressed with.

13 And I was not concerned particularly with  
14 the content of the first referral because I did not  
15 see that the first referral in any way would have  
16 extended what we were attempting to do. It was of no  
17 real consequence to me other than that the RTC was  
18 complaining that they hadn't been notified.

19 Q And what I'm trying to do, Mr. Johnson, is  
20 just get the basis for your understanding at this  
21 period of time, and --

22 A I understand that.

1 Q Is it your belief that you read the  
2 MacDougall memo prior to seeing the first referral?

3 A I would have only read it at the same time.

4 Q Okay.

5 A I did not read it before seeing the first  
6 referral.

7 Q And I believe that you said that your  
8 understanding, prior to even reading the first  
9 referral, was that it had been declined, and so it  
10 couldn't have been, I believe, from what you've told  
11 me about your conversations with Mr. Dodson, you  
12 couldn't have gotten that understanding from him, and  
13 I don't believe you could have gotten your  
14 understanding from the MacDougall memo if you didn't  
15 read it until after that so I'm just trying to get a  
16 sense --

17 A Perhaps I've not been clear.

18 Q Okay. Well, maybe I'm confused and please  
19 enlighten me.

20 A Either way, let me see if I can clarify  
21 here. The first -- the specific conversations that I  
22 recall having about the first referral came up only

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1 in the context of Paula Casey being asked to notify  
2 the RTC of its status.

3 In my conversations concerning the  
4 investigation that was ongoing or that the FBI was  
5 attempting to do regarding Madison, no one had talked  
6 to me about the first referral as forming any kind of  
7 basis for it, as having any particular value in  
8 helping them outline the approach or gaining  
9 allegations that they had been able to cooperate or  
10 forming any sort of basis for their belief that this  
11 investigation needed to be done.

12 The approach the FBI outlined to me when I  
13 subsequently read the referral was fundamentally  
14 different than the approach taken in the referral. I  
15 saw no one using this referral to say to me there is  
16 something here worth pursuing.

17 When I finally read the referral, there was  
18 nothing in that referral that appeared to me to be  
19 worth pursuing that we weren't already attempting to  
20 pursue in a different approach that I felt was more  
21 productive and a better approach to ferret out  
22 whether there was fraudulent activity related to

1 Madison Guaranty, and if there was, who was  
2 responsible for it.

3 I found some of the -- in reading the  
4 referral, some of the conclusions, I found the  
5 referral full of conclusions instead of facts, and I  
6 found some of the conclusions rather startling coming  
7 from an investigator with RTC, and ones that in my  
8 experience of 20 years were, I thought,  
9 irresponsible.

10 I was not impressed with the quality of the  
11 referral and was not interested in using it to  
12 formulate a basis for an investigation, particularly  
13 when it was not needed to formulate the basis of an  
14 investigation because that had already been  
15 formulated.

16 So I didn't give the referral a lot of  
17 consideration except that Jean Lewis wanted to be  
18 notified.

19 Q I think that we're clear on that. Okay. I  
20 think that that's something that you've stated quite  
21 a few times now. But I'm trying to get at some other  
22 information besides what you've just said.

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1 I want to ask you a question about what you  
2 just said, though, and that is you said you felt that  
3 the referral was full of conclusions and not facts,  
4 and you base that on a reading of the referral but  
5 not of the exhibits; is that correct?

6 A Yes.

7 Q I would like you to look at -- there's no  
8 Bates number -- oh, maybe it starts 7809 and ends at  
9 7 -- it's kind of light, it might be 7877, and ask  
10 you if you recollect that that's the referral that  
11 we've been discussing.

12 (Witness reviewed the document.)

13 A It appears to be without -- do you want me  
14 to review the entire document?

15 Q No, I'm not asking you to review the entire  
16 document.

17 (Witness reviewed the document.)

18 A As best I can recall.

19 Q If you'll just for me read the section  
20 right next to February 19th, '85 which is part of the  
21 chronology and account of suspected violation.

22 A You are talking about the part that starts



1 "check number 611."

2 Q Yes.

3 A "Check number 611 for 95,562.62 was issued  
4 to Madison Guaranty Savings & Loan, for principal and  
5 interest payments on five McDougal-related loans."  
6 "To" is spelled wrong here by the way; in here, it's  
7 spelled t-o-o. "This check cleared from loan  
8 proceeds of \$351,502.80 deposited to McDougal's  
9 account on 2/22/85. The proceeds were designated  
10 'purchase and renovation of home' for the  
11 McDougals. However, over 100,000 of the proceeds  
12 were ultimately diverted for bringing other debt  
13 current."

14 Q Is your testimony that that section that  
15 you just read is not factual?

16 A No, ma'am.

17 MR. FISHMAN: I have to object. He made a  
18 statement which you are obviously trying to question  
19 him about. You picked out one paragraph in a  
20 20-some-odd-page --

21 MS. FISHER: We can go through all of it.  
22 What his testimony was is that there were no facts

1 and it was full of conclusions.

2 MR. FISHMAN: That is, I believe, a  
3 mischaracterization of his testimony, and perhaps if  
4 you gave him a chance to explain, since this is a  
5 discovery deposition and not a --

6 MS. FISHER: Absolutely. I've asked him to  
7 explain before. I've been very generous in asking  
8 people to explain, I believe.

9 THE WITNESS: One of the things that I  
10 recall from my reading of the deposition that was of  
11 some surprise to me -- excuse me, not the deposition,  
12 the referral. And I don't know exactly where it is  
13 in here, but the author of this referral at some  
14 point makes statements, conclusions that signatures  
15 on a check -- on checks that are in James McDougal's  
16 name are not his signature, and are, in fact, the  
17 signatures of a woman named Lisa Anspaugh.

18 And I remember one of the things that  
19 impressed me was, while an investigator might  
20 question the authenticity of the signature, it amazed  
21 me that an investigator was drawing a conclusion  
22 that, one, there was certainly a forgery; and two,

1 who the forger was without the benefit of any kind of  
2 handwriting analysis.

3 And those were the kinds of conclusions  
4 that in my experience are not -- don't give me a  
5 great deal of confidence that the person putting  
6 together the document is concentrating on presenting  
7 the facts as opposed to drawing conclusions from the  
8 facts. And I don't want their conclusions. I'm  
9 quite capable of making conclusions based upon  
10 well-founded evidence.

11 And I thought it rather startling that an  
12 investigator with the RTC would go so far as to make  
13 those kinds of statements without indicating there  
14 was any basis for it other than her own observation.  
15 That is an example of what I mean about the  
16 conclusions in the referral.

17 Q Okay. Just give me a second. I'd like to  
18 try to look for that section, if you don't mind.

19 (Pause.)

20 Could you read back the last question and  
21 answer, please.

22 (The reporter read the record as requested.)

1 BY MS. FISHER:

2 Q Mr. Johnson, I believe you just testified  
3 to what you consider to be an improper conclusion --  
4 I won't say improper. A conclusion in the criminal  
5 referral as opposed to the facts?

6 A Right, a conclusion that may have been  
7 valid, but certainly there was nothing based on the  
8 investigator's experience that would indicate that it  
9 was valid, and those sorts of conclusions, in my  
10 experience from an investigator's -- as a prosecutor  
11 for 20 years are very disconcerting because when you  
12 rely on investigators to be the persons who go  
13 investigate the facts on which you rely, to see them  
14 make conclusions without appearing to be well-founded  
15 is an indication that they're reckless, and as a good  
16 prosecutor you want to take that into account in the  
17 reliability you place on an investigator.

18 I considered the conclusions to be without  
19 a basis at that time and it made me very  
20 uncomfortable about relying on the representations in  
21 the referral as being well-founded.

22 Q And I guess I don't understand how it was

1 that you came to this level of discomfort without  
2 having looked at the 300-some-odd pages of exhibits  
3 that went with this referral, just one reading of the  
4 document.

5 A Well, if I was reviewing the referral as I  
6 do now, everyday review referrals for the purposes of  
7 determining whether our office was going to conduct  
8 an investigation, then looking at the exhibits might  
9 be something that I would do.

10 Q And you said that you knew at that time  
11 that the FBI was conducting an investigation --

12 A Yes.

13 Q -- at Madison?

14 A Yes.

15 Q And I think --

16 A And so there was no need to evaluate that  
17 referral from the standpoint of whether an  
18 investigation needed to be initiated on it.

19 Q Okay. Getting back to what we were  
20 discussing before about the formal declination of  
21 this criminal referral, what do you recall was  
22 discussed between Ms. Casey and main Justice about

1 the notification to the RTC of the status of the  
2 criminal referral?

3 A What I recall Ms. Casey telling me was that  
4 she had had several conversations with either Donna  
5 Henneman or Deborah Westbrook at the legal counsel  
6 office and that they had told her that Jean Lewis had  
7 contacted them on a number of occasions about the  
8 status of the referral and would she please notify  
9 Jean Lewis of the status so that Jean Lewis would  
10 quit calling them about it.

11 Q And did she -- is it your recollection that  
12 she said please notify the RTC that the referral has  
13 been declined?

14 A I don't know.

15 Q Is it your understanding that the view of  
16 Ms. Westbrook or Ms. Henneman at the Department of  
17 Justice or anyone else at the Department of Justice  
18 was expressed to Ms. Casey that the referral had been  
19 declined as of that time?

20 A I didn't have to ask Ms. Casey. There was  
21 no one that I talked to or no one that ever mentioned  
22 the referral to me that ever treated that referral as

1 anything other than something that had occurred in  
2 the past. No one treated that referral, that ever  
3 said anything to me, as though it was open, that  
4 anything needed to be done with it other than notify  
5 the RTC, or that it affected in any way any  
6 investigation that was ongoing.

7 Q If the criminal referral was not open, why  
8 would the RTC have to be notified of the status?

9 A You'll have to ask Ms. Lewis that.

10 Q Ms. Lewis or Ms. Casey?

11 A You'll have to ask Ms. Lewis that. Part of  
12 what perhaps would help you understand this is I get  
13 inquiries now from the RTC about referrals that have  
14 been opened, prosecuted and closed five, six years  
15 ago. Cases in which people have gone to court and  
16 been convicted on that they're still asking for  
17 recordkeeping purposes, to be notified about.

18 Having the RTC call and ask about the  
19 status of something that's over and done with in our  
20 office is nothing unusual and is nothing new and it  
21 is a painstaking recordkeeping process. It happens  
22 frequently. So the fact that an investigator was

1 asking about what had happened to this old referral  
2 was of no significance to me.

3 Q I understand your views as to the  
4 significance of the criminal referral at this point  
5 in the deposition. Is it your recollection, though,  
6 that this criminal referral had never been formally  
7 declined as of this time?

8 A As of today?

9 Q No, as of this time that we're talking  
10 about.

11 A I have no idea. My recollection was that  
12 it was a matter that was inactive and not being  
13 pursued.

14 Q Are you aware that Ms. Casey sent a formal  
15 declination letter on the criminal referral on  
16 October 27th, 1993?

17 A Yes, ma'am.

18 Q That was sent because there had been no  
19 formal declination prior to that time; correct?

20 A That's correct. I reviewed that letter  
21 before it got sent.

22 Q Did you draft the letter?

1 A No, Ms. Casey drafted the letter.

2 Q Did she discuss it with you?

3 A She did.

4 Q And is it your understanding that Ms. Casey  
5 had conversations with anyone at the Department of  
6 Justice regarding her declination of the criminal  
7 referral?

8 A As I indicated, she represented to me that  
9 Donna Henneman and/or Deborah Westbrook had requested  
10 that she do that.

11 Q Anyone else?

12 A Not that I recall. Not that I recall her  
13 mentioning to me.

14 Q So it's your understanding that prior to  
15 the formal written declination that was transmitted  
16 on October 27th, 1993, Ms. Casey had not discussed  
17 that declination with anyone at the Department of  
18 Justice in Washington, D.C.?

19 A Other than --

20 Q Other than Ms. Henneman and Ms. Westbrook  
21 about the housekeeping?

22 A I have no recollection of her doing that or

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1 advising me that she did that. She may have talked  
2 with someone else, but not that I'm aware of at this  
3 time.

4 Q I'd like to go back to your chronology and  
5 go back to the discussions between the eastern  
6 district of Arkansas and Mr. Coleman, and the letters  
7 that went back and forth between your office and his  
8 office on September 15th and September 16th. The  
9 letter that was written to Mr. Coleman on September  
10 16th, do you recall whether you had a part in  
11 drafting that letter?

12 A I don't know. If you have a copy of the  
13 letter I could tell you.

14 Q There you go.

15 MR. FISHMAN: For the record --

16 MS. FISHER: Oh, sorry, the Bates number  
17 range is 7654 to 7657.

18 MR. FISHMAN: And that's the incoming from  
19 Mr. Coleman on the 15th and the outgoing to  
20 Mr. Coleman on the 16th.

21 MS. FISHER: That's correct.

22 (Witness reviewed the document.)



1 THE WITNESS: I believe Ms. Casey drafted  
2 this letter.

3 BY MS. FISHER:

4 Q Did you discuss this letter with her when  
5 she sent it on September 16th?

6 A I discussed the letter that we received  
7 from Mr. Coleman dated the 15th with her prior to her  
8 responding -- prior to her drafting the letter of the  
9 16th. Whether I actually saw the letter she drafted  
10 and sent on the 16th before she sent it or not, I  
11 don't recall, but we certainly had discussed the  
12 subject matter and the content of the response.

13 Q And I believe the next entry on your  
14 chronology is September 20th, it says "phone  
15 conversation with Randy Coleman"?

16 A Yes.

17 Q "I told him that we are ready and willing  
18 to take any proffer his client had to offer but his  
19 client would have to plead to felony and would get 5K  
20 motion." Do you recall that conversation with  
21 Mr. Coleman?

22 A Vaguely, yes.

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1 Q Do you recall what it was that Mr. Coleman  
2 told you on September 20th regarding his offer to  
3 plead?

4 A My recollection of that conversation was  
5 that it was the same as the letters had been in  
6 Paula's description of her conversation with  
7 Mr. Coleman from September 7th, that it was -- in  
8 general terms, that he was still looking for either a  
9 walk for his client or a misdemeanor. And our  
10 position was that that was unacceptable, that his  
11 client would have to plead to a felony and receive  
12 the benefit of the information he provided by our  
13 making a motion for reduction of sentence as opposed  
14 to not charging him.

15 MR. SCHAUER: Would you mind if we take two  
16 seconds.

17 MS. FISHER: Not at all. Absolutely.

18 (Recess.)

19 BY MS. FISHER:

20 Q Who initiated the September 20th phone call  
21 between you and Mr. Coleman?

22 A Mr. Coleman did.

1 Q And what information did he provide at that  
2 time regarding any proffer he would make?

3 A None.

4 Q No information whatsoever?

5 A None.

6 Q General allegations?

7 A None.

8 Q Had you talked with Mr. Jackson about what  
9 information he had at that time?

10 A I think by then I had talked with  
11 Mr. Jackson, but it seemed to me by that time  
12 Mr. Coleman had talked about Mr. Coleman and Mr. Hale  
13 had talked with The New York Times, and we were aware  
14 of that. The reporters for the Times had contacted  
15 Ms. Casey on Friday, the preceding Friday -- the 20th  
16 of September was a Monday if I recall correctly and  
17 Ms. Casey had been contacted on the preceding Friday  
18 by The New York Times indicating that they had  
19 interviewed David Hale and Randy Coleman for five  
20 hours and wanted comments by her on things they had  
21 told her. Other than the indirect learning of the  
22 information that Hale supposedly had through that

1 method I've just described, Mr. Coleman never made  
2 any representations to me what Mr. Hale would offer.

3 Q Nor, to your understanding, to Ms. Casey?

4 A Right.

5 Q What is it that The New York Times reporter  
6 that visited your offices -- I hope I got that right,  
7 on what would have been September 17th, or was it a  
8 phone call?

9 A I don't remember. I was not present for  
10 it. This was told to me by Ms. Casey subsequently,  
11 although it seems to me that it was a visit because  
12 she -- because she mentioned that there were two of  
13 them. So it must have been a visit.

14 But my best recollection at that time was  
15 there was an allegation by Mr. Hale that he could  
16 provide information -- I don't remember if he  
17 directly said President Clinton or the implication  
18 was that it would be concerning President Clinton.

19 Q Did the allegations also relate to Jim Guy  
20 Tucker at that time?

21 A I don't remember. The allegations from  
22 Mr. Hale?

1 Q From Mr. Hale relayed to you or relayed to  
2 Ms. Casey by this New York Times reporter?

3 A I don't remember.

4 Q So you never discussed that with Ms. Casey  
5 at that time, what the --

6 A I'm sure we did, I just don't recall  
7 whether that was an allegation that Mr. Hale made  
8 through the reporters, or allegedly had made at that  
9 time. What I remember the focus turned out to be on  
10 was some representation that was subsequently  
11 reported in the press that Mr. Hale had some claim  
12 that he had been pressured by now-President Clinton  
13 into making some sort of loan at the bequest of James  
14 McDougal, and I don't remember Mr. Tucker being  
15 mentioned as any part of that transaction.

16 Q As any part of the transaction as relayed  
17 in the newspaper story, or as other information that  
18 you received?

19 A As related as supposedly coming from  
20 Mr. Hale.

21 Q Also on September 20th, is it your  
22 recollection that you received a call from Jack

1 Keeney, and I believe it's indicated on your  
2 chronology?

3 A Yes.

4 Q Who initiated that phone call?

5 A I believe Mr. Keeney did. I would --  
6 Mr. Keeney did.

7 Q And am I correct that Ms. Casey was out of  
8 the office at that time?

9 A Yes, if you'll notice on the chronology,  
10 Ms. Casey left for San Antonio on September 18th to  
11 attend the orientation session for new U.S.  
12 Attorneys -- either the orientation session or the  
13 Federal Practice Institute, but it was a training  
14 program that a number of the new incoming U.S.  
15 Attorneys were attending and she left on Saturday or  
16 Sunday to go to that and was in San Antonio, and I  
17 was getting ready to leave that day for a seminar in  
18 Alexandria, Virginia.

19 Q What do you recall about the substance of  
20 the phone conversation with Mr. Keeney?

21 A Very little.

22 Q And I believe you have noted on here that

1 he gave you the names of Mr. McDowell and Joel, last  
2 name unknown?

3 A The best -- yeah, the best I recall about  
4 this, at this point someone had contacted the  
5 Department regarding our plans to indict Mr. Hale,  
6 someone from the media had contacted somebody in the  
7 Department about this, and Mr. Keeney was inquiring  
8 about this matter and the status and the allegations,  
9 and I told him about the letters and the  
10 conversations, as I knew them to be, with  
11 Mr. Coleman. He asked that I fax him copies of the  
12 letters, and I instructed my secretary to do so and  
13 she did.

14 Q Is it your recollection that Mr. Keeney  
15 provided you information that he had received from  
16 another source regarding Mr. Hale's allegations?

17 A As best I recall. At some point I  
18 learned -- and I can't specifically say whether it  
19 was this phone conversation, although I tend to  
20 believe it was, that some reporter -- and  
21 subsequently I heard it was the same reporter that  
22 had contacted Ms. Casey on Friday, but at the time it

1 was treated as an anonymous source -- contacted  
2 someone he knew within the Department of Justice  
3 about these allegations and contentions that our  
4 office was unwilling to accept or take this  
5 information.

6 And Mr. Keeney was inquiring about whether  
7 we had an investigation, what its status was and what  
8 was going on. And I told him that quite to the  
9 contrary, that the representations he was getting  
10 were not true, that Mr. Coleman, in my view, was not  
11 negotiating in good faith on behalf of David Hale.  
12 We had persistently tried to get him to make his  
13 client available to make a proffer, and he had shown  
14 no interest in taking that step.

15 Q And it's your recollection that you  
16 discussed this with Mr. Keeney on September 20th?

17 A Mr. Keeney and I had four or five  
18 conversations, as I recall, over the next several  
19 days. And whether all of this was discussed in the  
20 first one or not, I can't honestly tell you. I know  
21 that we had several after I got to Alexandria because  
22 I ended up leaving the conference I was supposed to

1 attend because I was spending so much of my time on  
2 the phone dealing with this matter both with  
3 Mr. Keeney, Ms. Casey, my office. It just -- I just  
4 went back to Little Rock to deal with it, frankly.

5 Q Do you recall that you had more than one  
6 conversation with Mr. Keeney on September 20th?

7 A On September 20th? I don't know if I had  
8 more than one with him on September 20th. I know  
9 that, like I said, over the next several days -- I  
10 know that I left my office -- in fact, I delayed my  
11 flight because I was taking care of this stuff. I  
12 was supposed to leave earlier in the day and didn't  
13 end up leaving until that night about 6:00.

14 MR. FISHMAN: That would be on the 20th.

15 THE WITNESS: On the 20th. And while I was  
16 in the conference Mr. Keeney had got ahold of me and  
17 left a message for me at the hotel in Alexandria and  
18 I called him from the hotel and talked with him, in  
19 fact, had what -- I recall several conversations with  
20 him over the next couple of days, but I -- so where  
21 each of those conversations take place, Ms. Fisher, I  
22 can't really tell you. My best recollection is I

1 only had one with him while I was still in my office  
2 in Little Rock on the 20th.

3 BY MS. FISHER:

4 Q And was it at that time that you faxed him  
5 the correspondence between Mr. Coleman and Ms. Casey  
6 or Mr. Coleman and the U.S. Attorney's office in the  
7 eastern district of Arkansas?

8 A Actually, there were several faxes to  
9 Mr. Keeney because as additional correspondence came  
10 in, I instructed my secretary via phone to fax it to  
11 him. I was in Alexandria at the time, so there were  
12 subsequent faxes of additional letters.

13 Q Okay. At that point, though, when you were  
14 in Little Rock on September 20th you did fax him --  
15 and I probably have it here -- the initial letters?

16 A I think this is --

17 Q September 15th and September 16th?

18 A Yes, I think that's the document you gave  
19 me before. It shows a fax transmission from me to  
20 Mr. Keeney dated the 20th and this would have been  
21 the fax that was initiated by my secretary at my  
22 instruction.



1 Q And that was pursuant to a request by  
2 Mr. Keeney?

3 A Yes.

4 Q And prior to that time, these, this  
5 correspondence had not been sent to the Department of  
6 Justice in Washington?

7 A No.

8 Q Is it your recollection that in that  
9 September 20th conversation with Mr. Keeney, that he  
10 directed that communication be made to Mr. Coleman  
11 that main Justice was available to Mr. Coleman and  
12 Mr. Hale regarding Mr. Hale's allegations, Mr. Hale's  
13 attempts at plea agreements?

14 A At some point in the next few days -- at  
15 some point in my conversations with Mr. Keeney, I do  
16 recall that subject being discussed. I don't  
17 remember when that was first broached and so I can't  
18 tell you which conversation it was in. And I don't  
19 remember the resolution of that with Mr. Keeney  
20 because that was not an idea that I supported.

21 Q So it's your understanding that there was  
22 no -- was this ever done?

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1 A I don't know. I don't remember --

2 Q Not at your direction?

3 A Did I ever tell Mr. Coleman that?

4 Q Did you ever direct -- did you either  
5 yourself or did you direct some communication to be  
6 made to Mr. Coleman relaying the information that  
7 main Justice was available to him?

8 A Not that I recall. My contacts with Randy  
9 Coleman, other than the phone conversation we've  
10 already covered, were all in writing with the  
11 exception of calls I received by him to set up  
12 meetings.

13 Q So the answer is no?

14 A As best I recall. Unless it's in one of  
15 the letters that were sent to Mr. Coleman. I don't  
16 recall it being in one of the letters.

17 Q Do you recall discussing with Ms. Casey  
18 Mr. Keeney's request to make it known to Mr. Coleman  
19 that Mr. Coleman had access to main Justice?

20 A No, I don't.

21 Q So it's your recollection that you didn't  
22 have conversations with Ms. Casey regarding these

1 subjects that you were discussing -- well, this  
2 subject that you had discussed with Mr. Keeney?

3 A I don't remember having that conversation  
4 with Ms. Casey, no.

5 Q Can you tell me generally over the next few  
6 days -- and you said there was a series of phone  
7 calls between you, main Justice, Ms. Casey -- can you  
8 tell me generally first what those conversations were  
9 about?

10 A Well, they were concerning David Hale and  
11 Randy Coleman and the response, if you -- as I'm sure  
12 you know, Mr. Coleman faxed a letter to my office on  
13 September 20th subsequent to my phone conversation  
14 with him, and when I received that letter --

15 Q I think I have it here if you'd like to  
16 refresh your recollection. It's Bates number 4680,  
17 4681 and I'll go on and I can provide you also with  
18 what appears to be a response, 5166 to 5168.

19 A Okay.

20 MR. FISHMAN: Dated the following day, the  
21 21st.

22 MS. FISHER: Dated the 21st, thank you.

1 THE WITNESS: There is another --

2 MS. FISHER: Am I missing one? That's very  
3 possible.

4 MR. FISHMAN: I think both letters you  
5 gave, just gave to Mr. Johnson are letters from the  
6 U.S. Attorney's office to Mr. Coleman.

7 THE WITNESS: Let's see, this is the letter  
8 from --

9 MS. FISHER: 18662.

10 THE WITNESS: Okay. This is -- yes, this  
11 letter, the one, 018662.

12 (Discussion off the record.)

13 THE WITNESS: Actually, I would like to add  
14 for the record when you asked me about the first two  
15 letters and these dealings with Randy Coleman, I made  
16 the observation to Mr. Keeney in the phone  
17 conversations that I did not believe that Randy  
18 Coleman was meeting with us in good faith and with  
19 any kind of sincerity on behalf of his client because  
20 when the reporter talked to Paula, the reporter had  
21 copies of our correspondence with Randy Coleman  
22 concerning David Hale that Randy Coleman had

1 provided.

2 And I didn't consider that to be the act of  
3 someone who is sincerely interested in negotiating a  
4 resolution to their potential criminal charges and  
5 cooperating with the government. I considered that  
6 an act of bad faith.

7 MR. FISHMAN: Excuse me a second.

8 (Discussion off the record.)

9 BY MS. FISHER:

10 Q Here is another letter, Bates number 17493,  
11 I think also on the date of September 20. And I  
12 believe now that you probably have --

13 A Yes, I have -- I have the letters dated  
14 September 15th and 16th.

15 Q Which we've already discussed?

16 A Which we've already discussed. And then I  
17 have in front of me a letter to me from Mr. Coleman  
18 dated the 20th that was, I believe, faxed to our  
19 office, another one to Paula Casey dated the 20th  
20 that is shown to be hand-delivered, and then one  
21 dated the 20th signed by me to Mr. Coleman, and then  
22 one dated the 21st to Mr. Coleman and signed by --

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1 the signature is Paula Casey's as written by her  
2 secretary.

3 Q Turning to the September 20th letter from  
4 Randy Coleman to you, Bates number 17493?

5 MR. FISHMAN: Off the record for a second.

6 (Discussion off the record.)

7 BY MS. FISHER:

8 Q I believe in the third sentence it states  
9 "I have previously indicated to Fletcher some time  
10 ago very definitive areas in which Mr. Hale had  
11 knowledge and also reviewed a list of names involved  
12 as well."

13 At the time you received this letter, did  
14 you discuss such information with Mr. Jackson?

15 A No.

16 Q This did not cause you to try to discover  
17 what it was that Mr. Coleman was referring to?

18 A No.

19 Q Or had you already had --

20 A From Mr. Jackson?

21 Q Yes.

22 A No.

1 Q Why is that?

2 A Because I had been dealing with Mr. Coleman  
3 directly. And Mr. Coleman at this time knew that any  
4 negotiations he had to make on behalf of Mr. Hale  
5 were with me and not with Mr. Jackson and --

6 Q Was Mr. Jackson taken off of the case at  
7 that point, as of September 20th?

8 A No, ma'am.

9 Q Was he involved in these negotiations with  
10 Mr. Coleman at all?

11 A No, ma'am.

12 Q Was he involved in the Hale investigation  
13 and the investigation relating to Madison at this  
14 point, September 20th, 1993?

15 A There had been, as best I recall, subpoenas  
16 issued on the Madison investigation, subpoenas to the  
17 RTC by this point, but his main concentration, of  
18 course, was on the Hale investigation because it was  
19 scheduled for presentation to the grand jury the  
20 following day.

21 Q But it's your testimony that he never  
22 indicated to you what these very definitive areas in

1 which Mr. Hale had knowledge were or a list of names  
2 involved?

3 A That's Mr. Coleman's version of the  
4 conversation.

5 Q But what I'm asking you is Mr. Jackson  
6 never indicated this information to you?

7 A He never -- no, he did not. He did not  
8 indicate to me that that had ever occurred or that  
9 any such information like that had happened, and I  
10 had sought that information from Mr. Coleman  
11 directly, and Mr. Coleman had never provided it to me  
12 other than to claim he had told Fletcher in the past  
13 in this letter.

14 Q Did you discuss this with Mr. Jackson at  
15 the time?

16 A No, ma'am.

17 Q Prior to sending the next -- well, I don't  
18 know which one was first, actually, so I can't say  
19 that.

20 A The next, the letter in response to this  
21 was the letter dated September 21st.

22 Q Okay. So prior to sending the September

1 21st letter, which I can't seem to find, did you  
2 discuss that with Mr. Jackson?

3 A No.

4 Q Okay. Getting back to your conversations  
5 with Mr. Keeney and Ms. Casey over the weekend of the  
6 20th --

7 A Can I go back on these letters a minute  
8 because now having reviewed these later letters, I  
9 think I need to correct something I said earlier.

10 Q Sure. Absolutely.

11 A You asked me if Mr. Coleman had initiated  
12 the phone conversation with me.

13 Q Uh-huh.

14 A And as I recall, reviewing this letter and  
15 these letters -- and remember, there are two letters  
16 from Mr. Coleman. I need to correct that because  
17 what I recall is that Mr. Coleman initiated the  
18 contact on the 20th, but I now recall that he did so  
19 by his first letter dated September 20th and that I  
20 phoned him in response to that letter.

21 MR. FISHMAN: For the record that's 7632.

22 THE WITNESS: Right.

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1 MR. FISHMAN: Just so we're clear which one  
2 was the first, what Mr. Johnson believes was the  
3 first letter on the 20th that he received from  
4 Mr. Coleman.

5 BY MS. FISHER:

6 Q Okay.

7 A So this letter marked 7632 I received, and  
8 I called Mr. Coleman in response to that letter and  
9 had the conversation that we had and then I  
10 documented my phone conversation with Mr. Coleman in  
11 my letter dated September 20th.

12 Q Did you take any notes of this  
13 conversation?

14 A I don't know if I did or not. Probably I  
15 did. I believe that I dictated the letter shortly  
16 after my conversation with Mr. Coleman ended because,  
17 as I indicated earlier, I was scheduled to leave to  
18 come here for a conference. All of this was  
19 happening as I was supposed to be leaving, and I was  
20 trying to take care of it.

21 The second letter by Mr. Coleman dated the  
22 20th I did not receive before I left. I did not



1 receive this, as I recall, until the next day when it  
2 was faxed to me by my secretary. In fact, on the  
3 copy I'm looking at, which is number 017493, there is  
4 a number down at the bottom that has a room 335, and  
5 my guess is that is the hotel number and my room  
6 number in the hotel in Alexandria that my secretary  
7 wrote on there so she could fax this letter to me.

8 So I did not receive this letter until I  
9 was in Alexandria, and dictated the response that is  
10 over Ms. Casey's signature to her secretary over the  
11 phone. And so I was not in the office to discuss the  
12 representations that Mr. Coleman made in his second  
13 letter on the 20th with Mr. Jackson because I was in  
14 Alexandria.

15 I had talked to Mr. Coleman and told him  
16 basically what I wrote him in my letter of the 20th,  
17 and at no time did Mr. Coleman ever indicate to me  
18 that David Hale -- what David Hale could or would do  
19 other than claim that he would do something if we  
20 would just not indict him. And I told him repeatedly  
21 that what we needed for him to do was to sit down and  
22 give a full proffer under immunity of what he could

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1 testify to and go from there, and that was the one  
2 step that Mr. Coleman would never do and never take  
3 seriously until October 21st.

4 Q The conversations that you had over the  
5 weekend while you were in Alexandria with Ms. Casey  
6 and Mr. Keeney that we were just discussing before  
7 around this September 20th date, was Mr. Jackson  
8 involved in any of those conversations?

9 A No.

10 Q Are you aware of any conversations between  
11 Mr. Keeney and Mr. Jackson around that time?

12 A I'm not aware of any, but if Mr. Keeney had  
13 contacted Mr. Jackson, I don't -- I don't recall  
14 anybody ever telling me that, but Mr. Jackson would  
15 have been in Little Rock and I was in Alexandria.

16 Q Did Ms. Casey have any conversations with  
17 Mr. Jackson about this issue --

18 A No.

19 Q -- during that time period?

20 A Not that I recall, no.

21 Q Can you tell me generally the substance --  
22 well, you told me generally that you discussed the

1 Hale investigation and these Hale allegations over  
2 that weekend with Mr. Keeney and Ms. Casey?

3 A Actually, it was not a weekend; it was the  
4 middle of the week actually. I left on Monday  
5 evening for Alexandria and I believe this conference  
6 was occurring Tuesday, Wednesday, and Thursday.

7 Q Okay. I see. I apologize. I believe that  
8 you told me that the conversation centered around the  
9 Hale allegations that had come to Mr. Keeney.

10 A It centered -- it centered less around the  
11 allegations than around the process at that point.

12 Q Is it your recollection that Mr. Keeney  
13 suggested that Ms. Casey recuse herself from the case  
14 at that time?

15 A He absolutely did.

16 Q And what is the substance of what you  
17 recall him saying?

18 A This was a conversation -- I remember this  
19 conversation a little bit better than others because  
20 I remember that this occurred while I was in  
21 Alexandria, and I found Mr. Keeney's suggestion that  
22 Paula recuse herself occurred after the letters had

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1 been completed. In fact, if you'd like me to go into  
2 the background of that, when I received the second  
3 Coleman letter dated the 20th, I made Mr. Keeney  
4 aware of that when he called me in Alexandria. I  
5 believe I had Valerie fax that letter to him. I also  
6 told him that I was drafting a response for  
7 Ms. Casey's signature and the gist of my response.  
8 And I remember very specifically that Mr. Keeney  
9 thought my proposed response was exactly on target  
10 and he was in full agreement with it.

11 And then he brought up the subject of Paula  
12 Casey recusing herself. And frankly it surprised me  
13 and greatly disappointed me that Mr. Keeney would  
14 have that response, and I told him that I adamantly  
15 opposed that idea and told him why I adamantly  
16 opposed that idea.

17 Q Was it your understanding that he was  
18 suggesting that Ms. Casey recuse herself from the  
19 Hale investigation, from the Hale allegations or from  
20 the Madison investigation or all three?

21 A There was no conversation at that point  
22 concerning the Madison investigation.

1 Q Meaning you didn't bring the Madison -- the  
2 Madison investigation --

3 A All of these conversations focused on the  
4 indictment -- pending indictment of David Hale on the  
5 21st, the same day the conversations were occurring  
6 for the fraud related to SBA and Hale's contentions  
7 that he had important things to say about important  
8 people.

9 Q So was it at this point that the Hale  
10 investigation and the Madison investigation were now  
11 separate, unrelated cases?

12 A No, they weren't separate, but the focal  
13 point at that point was finishing the first step of  
14 the process, which was the indictment of David Hale  
15 on the SBA fraud. The conversation was about that.  
16 I believe in one of Mr. Coleman's letters is where he  
17 brings up the idea of Ms. Casey recusing herself and  
18 the comments by Mr. Keeney about recusal solely  
19 related to Randy Coleman's contention that simply  
20 because Paula Casey had been appointed by President  
21 Clinton that our office needed to recuse itself.

22 And I told Mr. Keeney that I thought that

1 assertion was ridiculous. Given the bad faith that  
2 Mr. Coleman had demonstrated to me in not making his  
3 client available for proffer, that if the Department  
4 took the position that somebody could go to the  
5 press, make a claim that a U.S. Attorney appointed by  
6 a President would be biased against their position  
7 and the Department would act on that basis for  
8 recusal, they might as well shut down the U.S.  
9 Attorney's office in Little Rock for the next four  
10 years because every significant case we investigated  
11 would be met with that allegation. And I think  
12 that's almost precisely the quote of what I told  
13 Mr. Keeney.

14 Q So you don't recall that Madison Guaranty  
15 Savings & Loan in Little Rock, the fact that it may  
16 have been involved with loans to Mr. Clinton and  
17 Mr. Tucker, Whitewater Development Corporation, any  
18 allegations surrounding that matter were brought up  
19 or discussed with Mr. Keeney --

20 A My recollection is --

21 Q -- during this time period?

22 A My recollection in this first conversation

1 is that they were not.

2 Q What about the conversations that you had  
3 over the next couple days?

4 A No. They were eventually discussed with  
5 Mr. Keeney in conversations later in October, but not  
6 during this time frame.

7 Q So your recollection is between September  
8 and October of 1993 in your discussions with  
9 Mr. Keeney or Ms. Casey --

10 A Those are separate.

11 Q Okay.

12 A With Mr. Keeney the answer is no. With  
13 Ms. Casey the answer is yes.

14 Q Well, I was going to say between Ms. Casey  
15 and Mr. Keeney.

16 A I don't know about -- I don't believe that  
17 Ms. Casey and Mr. Keeney talked about them. I don't  
18 know because I was not part of their conversations.  
19 I know that Ms. Casey and I talked about them  
20 regarding Mr. Tucker and the President and other  
21 people and the potential for recusal. That  
22 conversation occurred shortly after these

1 conversations.

2 Q Would that have occurred after the  
3 September 23rd newspaper article relating to  
4 Mr. Hale's allegations?

5 A It certainly did occur after that. It  
6 might have also occurred before that.

7 Q Well, why don't you tell me a little bit  
8 about your conversations with Ms. Casey and how these  
9 matters related?

10 A What I recall -- and you are talking about  
11 this group of conversations?

12 Q Well, I want to focus on this time period.

13 MR. FISHMAN: Which time period?

14 MS. FISHER: September 20th.

15 THE WITNESS: Through the end of that  
16 week?

17 BY MS. FISHER:

18 Q Maybe through the end of that week.

19 A All right. An awful lot happened during  
20 that time because Paula was in San Antonio, I was in  
21 Alexandria, and, frankly, both of us spent so much  
22 time on the phone dealing with this whole thing that

1 we decided, I believe on Thursday morning, that it  
2 was fruitless for both of us to try to remain at our  
3 conferences and agreed to fly back to Little Rock and  
4 meet in Little Rock and see if we could deal with all  
5 of this from Little Rock.

6 And so we both did. We returned. Each of  
7 us returned early from our conferences, arriving back  
8 at different times on the 23rd. She arrived back  
9 before I did -- earlier in the day before I did, and  
10 we met the next day with the FBI concerning all of  
11 this issue. During the course of this when I  
12 received the call from Mr. Keeney, I believe he had  
13 indicated to me he had attempted to get ahold of  
14 Paula and had left a message for her at the  
15 conference in San Antonio but had not heard back from  
16 her at the time I talked with him.

17 I beeped Paula and my recollection is that  
18 when she and I talked, that she had received the  
19 message from Keeney. I believe she had tried to  
20 return his call, but had not reached him and may have  
21 gotten another message from him, but that she and I  
22 talked before she had been able to reach Mr. Keeney.

1 And I filled her in on what Mr. Keeney wanted to  
2 discuss with her as he represented to me and I filled  
3 her in on it --

4 Q Just to keep this straight, this was the  
5 information that they had received at the Department  
6 of Justice?

7 A This was everything concerning Hale, our  
8 pending indictment, the letters, the representation  
9 to the Department from this anonymous source that our  
10 office was unwilling to hear this information.

11 Q And what, was recusal discussed at that  
12 time?

13 A I told her at that time --

14 Q Before she called Mr. Keeney back?

15 A Mr. Keeney had brought up the subject of  
16 recusal and I told her on the phone what my reaction  
17 was and what my reasons were. By this time, Paula  
18 and I had been working together as managers for less  
19 than two weeks, and I didn't know Paula Casey and she  
20 didn't know me except that I existed in the months  
21 that she had become U.S. Attorney.

22 And I didn't know how far -- exactly what



1 Paula's position would be on this, but one thing I  
2 promised Paula Casey when I took the first  
3 assistant's job is that she would never have to  
4 figure out where I was coming from because I would be  
5 pretty straightforward, in fact, very straightforward  
6 with her, and I was on this occasion extremely  
7 straightforward, if not aggressive with her.

8 Q And your response to Mr. Keeney, which you  
9 expressed to Ms. Casey, was that she shouldn't recuse  
10 just because she was appointed by President Clinton?

11 A She should not recuse, no, you have to take  
12 into account all the circumstances.

13 Q Okay. Why don't you tell me what your  
14 understanding of all the other circumstances were,  
15 because I didn't hear that from there.

16 A We had a municipal judge who had violated  
17 the law in a case that had nothing to do with any  
18 other significant public figure other than an  
19 attorney and a stock broker. He was on the verge of  
20 being indicted. He had, in my view, for at least two  
21 weeks since I had become first assistant played games  
22 with us through his attorney about whether he had

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1 information that he wanted to proffer. He had been  
2 given repeated messages that the way to get this done  
3 was to make himself available for an immunized  
4 proffer taken by the investigators who would then  
5 share the information with us, but that he'd have to  
6 agree to take a felony plea and he would get his cut  
7 in sentencing rather than through no prosecution at  
8 all or a misdemeanor.

9 And his attorney had shown absolutely no  
10 willingness to do that and had by that point,  
11 frankly, in my view, attempted to manipulate us  
12 through the use of the press to avoid indicting him,  
13 as evidenced by what I considered to be his  
14 self-serving and somewhat misleading letters and by  
15 the fact that he and his client had spent five hours  
16 talking to a New York Times reporter telling him more  
17 than he was willing to tell us and disclosing  
18 correspondence.

19 I didn't consider that to be the acts of an  
20 attorney who was sincerely trying to make his client  
21 available to provide information. Under those  
22 circumstances -- and then to call -- and then to have

1 the press person call the Department of Justice and  
2 accuse us of not listening, I considered that to be  
3 the height of manipulation.

4 Q And how does that relate to the issue of  
5 Mr. Keeney's belief that Ms. Casey should recuse  
6 herself?

7 A Because all the Department had at that time  
8 was supposedly a statement by the defendant to a New  
9 York Times reporter that he knew something when that  
10 very defendant was not willing to come in and tell  
11 investigators what he actually knew. And what I told  
12 Mr. Keeney is if you permit a public official, as  
13 David Hale was, to go to the press and make a claim  
14 like that and on that basis force an entire office to  
15 recuse itself based on that investigation, you might  
16 as well close this office for four years. Every time  
17 we get to a significant figure they can run out and  
18 make any irresponsible allegation they want. If you  
19 don't give us an opportunity to measure whether  
20 that's true and attempt to corroborate it and put the  
21 person to the test by coming in to the investigators  
22 and telling us what they know, if you don't require

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1 that before you trigger recusal, just shut down the  
2 office.

3 Q Was it your understanding that the source  
4 that the Department of Justice had relating to this  
5 information -- strike that.

6 As of this September 20th phone call, did  
7 you have knowledge that that source that Mr. Keeney  
8 had received this information from was a reporter?

9 A That was my understanding then.

10 Q That was your understanding at the time?

11 A Uh-huh.

12 Q From Mr. -- from whom?

13 A It would have been from Mr. Keeney, as best  
14 I know.

15 Q So you believed that -- it's your testimony  
16 that Mr. Keeney told you that the source of these  
17 allegations was a reporter?

18 A I don't know. It was not -- I don't know  
19 whether it was in the first conversation or not. I  
20 know that it was represented as an anonymous tip to  
21 the Department, but my recollection is that it was  
22 somebody associated with the media who knew somebody

1 in the Department -- well, that the Department person  
2 considered reliable.

3 Q And it's your testimony that you knew that  
4 as of this time when you presented these views to him  
5 on the initial September 20th phone call?

6 A I don't remember. Although that would  
7 not -- that part of it is inconsequential.

8 Q I would say that 50 percent of your last  
9 answer was based very much so on that part.

10 A No. My answer --

11 Q On where these allegations were coming  
12 from?

13 A That's right. David Hale only put the  
14 allegations into the press.

15 Q But if you didn't know that Mr. --

16 A David Hale didn't call the Department and  
17 say and give them a statement.

18 Q How was it that you knew who the source was  
19 if we didn't know who the source was?

20 A We do know who the source is now. It was  
21 Jeff Gerth.

22 Q But I'm talking as of September 20th.

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1 A The source to the Department acting as a  
2 voice for David Hale was of no consequence to me, in  
3 my opinion. What was of consequence to me, in my  
4 opinion, was the only place David Hale was willing to  
5 make the allegation was to a reporter.

6 Q Okay. Did Mr. Keeney make you aware that  
7 it was not only his opinion but others' within the  
8 Department of Justice view that Ms. Casey should  
9 recuse herself from the Hale case if not at least the  
10 Hale investigation of the Hale allegations?

11 MR. FISHMAN: At what point?

12 MS. FISHER: As of September 20th, around  
13 the same time of these discussions.

14 THE WITNESS: I don't remember him -- he  
15 certainly made his view known then because he brought  
16 up the subject of recusal. I don't remember him  
17 making any indication at that time that he had had  
18 any other discussion with other people or that any  
19 other persons felt that way. He certainly did later.

20 BY MS. FISHER:

21 Q And who was that?

22 A It seems to me that Gerry McDowell was of

1 that view. I don't really remember who else  
2 Mr. Keeney told me about. I do remember having a  
3 phone conversation and conference call with both  
4 Mr. Keeney and Mr. McDowell in which they expressed  
5 that view to me.

6 Q Over the next several days during your  
7 phone conversations with Mr. Keeney and/or  
8 Mr. McDowell, did they provide you with any further  
9 information of what Mr. Hale was alleging?

10 A Nobody ever did.

11 Q No one ever informed that you Mr. Hale, for  
12 example, was alleging making allegations related to  
13 Whitewater Development?

14 A No. At some point I read whatever it was  
15 Mr. Hale said to the media. That was the only thing  
16 that I was aware that Mr. Hale supposedly said, and  
17 that was to the media. No one made me aware of  
18 anything else that Mr. Hale was supposedly alleging.

19 Q Okay. I'm sorry. That was probably an  
20 ill-phrased question, but what I'm trying to get at  
21 is what it was that Mr. Keeney or others at the  
22 Department of Justice told you about their sources

1 being media or someone else, what that information  
2 was regarding the allegations that Mr. Hale was  
3 making at that time?

4 A No.

5 MR. FISHMAN: You mean other than what  
6 appeared in the press?

7 BY MS. FISHER:

8 Q Yes, other than what appeared in the  
9 press.

10 A I don't remember there being any specific  
11 discussion about what allegations Mr. Hale was making  
12 from anybody, but if they did advise me of them, I  
13 don't know that that would have been of any import to  
14 me under the circumstances.

15 Q So you didn't recall any discussion of  
16 Madison Guaranty or that cropping up in any way?

17 A Initially, no. Eventually, yes.

18 Q "Eventually" meaning how soon after?

19 A I don't believe there were any  
20 conversations with Mr. Keeney or Mr. McDowell about  
21 Madison that week. There certainly, the next week I  
22 really don't remember. Certainly in early October

1 there were. Some of which were initiated by me.

2 Q So you don't recall any discussion of loans  
3 made to President Clinton -- now-President Clinton,  
4 now-Governor Tucker or Whitewater Development  
5 Corporation from Madison relating in some way to  
6 Capital Management or David Hale?

7 A Do I ever remember that being discussed?  
8 At some point.

9 Q Do you remember it in this September time  
10 frame?

11 MR. FISHMAN: Again, I don't mean to  
12 belabor the point, but other than what appeared in  
13 the press? And I'm not suggesting that this appeared  
14 in the press.

15 BY MS. FISHER:

16 Q Other than what appeared in the September  
17 23rd article.

18 A With Mr. Keeney and Mr. McDowell?

19 Q Uh-huh.

20 A I don't.

21 Q So your understanding of their reason that  
22 they wanted Paula Casey to recuse from the matter as

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1 of September 20th was what?

2 A Solely based on Randy Coleman's assertion  
3 in one of his letters that Paula Casey could not be  
4 impartial.

5 Q So during these conversations, and I'll --  
6 September 20th and the week after it, was the subject  
7 of Ms. Casey's relationship with now-Governor Tucker  
8 discussed at all?

9 A With whom?

10 Q With Ms. Casey?

11 A And?

12 Q And now-Governor Tucker or his wife?

13 A With whom did the discussion occur, you  
14 mean with Mr. Keeney or Mr. McDowell?

15 Q Anyone.

16 A Yes, it did.

17 Q Can you tell me what the substance of that  
18 discussion was, and who you had it with?

19 A As I indicated before, Paula and I both  
20 came back to Little Rock to deal with this situation,  
21 and one of the things we did was to schedule a  
22 meeting with the FBI. That meeting was attended by



1 Don Whitehead who is the ASAC, Steve Irons who is in  
2 charge of the white collar crime squad; David Reign  
3 who is the agent assigned to the investigation;  
4 Gretchen Hall, who was the financial analysis.  
5 Fletcher Jackson, myself, and Ms. Casey.

6 Various people left at various stages in  
7 this meeting, but at some point during that meeting,  
8 there was a discussion about generally what the FBI  
9 was looking at. I believe it was in this meeting  
10 that this discussion occurred.

11 Q This is the September 24th meeting related  
12 on your chronology?

13 A Uh-huh. I know that part of the meeting  
14 was about the FBI's dissatisfaction with how Fletcher  
15 was handling the matter. In fact there was obvious  
16 animosity between Fletcher Jackson and Gretchen Hall  
17 during that meeting and that related to the Madison  
18 part, that didn't relate to the David Hale part.

19 And after the initial portion of that  
20 meeting I remained with the agents and with  
21 Mr. Jackson, and discussed specific investigative  
22 steps to be taken and how they would be taken

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1 because, at that time, I viewed the situation as one  
2 in which I had a management problem in which the team  
3 assigned to work together was not working together  
4 very well.

5 Q Well, I think what I asked you was --

6 A Was about the discussion.

7 Q Was the discussion with Tucker?

8 A What I don't recall is whether it was after  
9 that meeting that there was another meeting in which  
10 we discussed that, or whether it occurred at that  
11 meeting, because at the time we had the meeting in  
12 which Paula Casey was present and at least Steve  
13 Irons from the FBI was present. I don't recall  
14 whether David Reign was present. And I was present.

15 So I remember at least three of us there  
16 including Steve Irons from the FBI. I believe Don  
17 Whitehead was also there as best I recall. But it  
18 was after we learned what the FBI was looking at with  
19 regard to Madison, or wanted to look at with regard  
20 to Madison that we were unable to get the records on  
21 because their allegations included allegations that  
22 Tucker had been involved in matters that they wanted

1 to look at. And it was in having received those  
2 allegations, Paula made it clear from up front that  
3 if, in fact, there was information developed about  
4 Tucker that warranted legitimate pursuit and about  
5 one or two other people that were named, that she  
6 would recuse from those matters because of her  
7 connection and relationship with them.

8 Q Tell me what your understanding is about  
9 this connection and relationship with Tucker.

10 A It's social, on the basis of both having  
11 been long-time residents of Arkansas that I know of.

12 Q A social relationship with Mr. Tucker?

13 A Just as friends, people that are both in  
14 the same legal community, which is not a very big  
15 legal community. She knows who he is, he knows who  
16 she is. They speak together. She knows his wife.

17 Q Why did she feel that that was sufficient  
18 to --

19 A I don't know. You'll have to ask her.

20 Q -- base a recusal, do you have an  
21 understanding of that?

22 A All I knew is that she felt that, based on

1 the many contacts that she had had with Governor  
2 Tucker and his wife, that it would not be appropriate  
3 for her to deal with that investigation.

4 Q Who were the other individuals that she  
5 raised at that meeting that may --

6 A One was the fellow by the name of Steve  
7 Smith.

8 Q And what was your understanding with regard  
9 to Steve Smith?

10 A My understanding was, the basis for recusal  
11 on that was because Mr. Smith had previously dated  
12 one of Paula's best friends.

13 Q And who else?

14 A It seems to me there was another person,  
15 but I don't specifically recall.

16 MR. SCHAUER: There is a memo from  
17 Mr. Irons which recounts this meeting.

18 MS. FISHER: Okay.

19 MR. SCHAUER: It may help refresh his  
20 recollection.

21 BY MS. FISHER:

22 Q Handing you Bates number FBI 1545, memo

1 from Steve Irons, October 1, 1993, and I ask you to  
2 look at the third paragraph which states "after  
3 hearing the estimation of both writer and AUSA  
4 Jackson on the involvement of Tucker, Ward and Smith,  
5 USA Casey advised she would have to recuse herself  
6 and only had to decide the best time to do so."

7 Do you recall what Ms. Casey's relationship  
8 was with Ward?

9 A No, and frankly I believe there's been some  
10 confusion concerning that, based on my conversations  
11 with Ms. Casey.

12 Q And what is that confusion?

13 A My understanding from Ms. Casey is that she  
14 had no knowledge, or although she knew who Mr. Ward  
15 was, that she had no basis to recuse with regard to  
16 Mr. Ward, although I have been responsible for some  
17 of the confusion because for some reason, I had in my  
18 mind that was one of the people that would cause her  
19 recusal.

20 Q Is there a third person that they mistook  
21 this name for?

22 A I don't know. I don't know. It may have

1 been that in the -- it may have been that Steve Irons  
2 and I got this understanding from the same meeting  
3 from how Ms. Casey referred to it, and it simply  
4 wasn't clear in the meeting that Seth Ward was not a  
5 problem, but the primary two persons were Mr. Tucker  
6 and Mr. Smith, and those were clear.

7 Q Was there a third person?

8 MR. FISHMAN: He just said he didn't know.

9 THE WITNESS: I don't know.

10 BY MS. FISHER:

11 Q Well, I'm just trying to understand if it  
12 was the names got mixed up or it was a misperception  
13 of the relationship that got mixed up.

14 A My understanding until recently was that  
15 Seth Ward was also a problem in a conversation I had  
16 with Ms. Casey after each of us was interviewed by  
17 the independent counsel's office, and I related to  
18 her that I couldn't remember why Seth Ward was a  
19 problem. She said well, he wasn't. And so we had a  
20 conversation about that and I clearly had a  
21 misunderstanding based on what she told me fairly  
22 recently that Seth Ward was a problem, when in fact

1 from her view it's not or was not, because she's  
2 never met the man, talked to the man, or had any  
3 dealings with the man as I recall.

4 But Tucker and Smith were issues or persons  
5 about whom she felt unequivocally she would have to  
6 recuse herself.

7 Q Okay. And that was expressed at this  
8 September 24th meeting?

9 A Yes.

10 Q Is there anyone else that you haven't  
11 mentioned at the Department of Justice which you  
12 discussed the issue of recusal of Ms. Casey with  
13 during this time frame around September 20th, the  
14 week after?

15 A Not me personally, no, I don't remember  
16 there being other --

17 Q Were there other individuals that Ms. Casey  
18 discussed the issue with at the Department of  
19 Justice?

20 A I know eventually, in early November, she  
21 certainly did.

22 Q What about between September 20th, these

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1 discussions with Mr. Keeney, and early November, did  
2 either you or Ms. Casey discuss the issue of recusal  
3 with anyone at the Department of Justice?

4 MR. FISHMAN: When you say "discussed," you  
5 mean one-on-one, you mean in a conference call, do  
6 you mean in a meeting?

7 BY MS. FISHER:

8 Q Any contact, meeting, conference call.

9 A Can you ask that again. I was finishing --

10 MS. FISHER: Sure, could you read it back,  
11 please.

12 (The reporter read the record as requested.)

13 THE WITNESS: Between September 20th and  
14 November --

15 BY MS. FISHER:

16 Q Early November?

17 A As best I recall, yes.

18 Q And who is that?

19 A I would have talked with Mr. Keeney and  
20 Mr. McDowell about it again as I recall. In fact, on  
21 November 2nd, according to my notes, he brought that  
22 subject up and we talked about that. He being

1 Mr. McDowell.

2 Q Prior to November 2nd, did you have any  
3 conversations that you recall?

4 A With people at the Department of Justice, I  
5 don't recall. I may have. It had become a matter  
6 that they were concerned with, although it seemed to  
7 me that all of that sort of died out in anticipation  
8 that we would soon be getting referrals from the  
9 RTC. All of the discussion and focus of that died  
10 out in anticipation that the referrals were coming  
11 and nothing was going to go forward on that  
12 investigation until the referrals came because the  
13 RTC wouldn't give us any records anyway, and so I  
14 don't remember that matter being something that was  
15 discussed much until the referrals arrived near the  
16 middle of October. And then that discussion was  
17 renewed, middle to the end of October.

18 Q And it died out on the part of the U.S.  
19 Attorney's office, or it died out on the part of main  
20 Justice?

21 A Well, as far as their communications with  
22 me?

1 Q Yes.

2 A It died out. Now, whether they talked  
3 about it among themselves, I have no idea. But their  
4 communications, their communications with us pretty  
5 much -- there were very few communications that I  
6 recall after the Hale case was indicted until the  
7 referrals came in several weeks later.

8 Q Is it your understanding that the  
9 individuals that you discussed the recusal issue with  
10 in September of 1993 had an understanding that there  
11 would be more referrals relating to Madison coming in  
12 mid-October?

13 A Certainly at some point they did, and when  
14 and how I don't remember. I simply don't remember.

15 Q Do you recall what the extent of knowledge  
16 relating to the substance of those referrals prior to  
17 their arrival --

18 MR. FISHMAN: Whose knowledge?

19 BY MS. FISHER:

20 Q -- was? Your knowledge or anyone at the  
21 Department of Justice whom you discussed it with.

22 A Okay. My knowledge was, I had none about



1 what the substance would be other than a  
2 representation made to me, I believe by Steve Irons,  
3 that he suspected that the referrals would cover many  
4 of the things the FBI had already outlined to me that  
5 they had wanted to conduct. I know that I discussed  
6 this whole matter with Gerry McDowell in particular  
7 and with Allen Carver at the Department of Justice  
8 because I was seeking their assistance in trying to  
9 get records from RTC. And I was extremely frustrated  
10 with RTC not responding to our subpoenas to provide  
11 any of the material that the FBI kept representing to  
12 me they needed.

13 And at that point, I was trying to get the  
14 material for the FBI and the RTC wouldn't provide it  
15 and I discussed with both Mr. McDowell and Allen  
16 Carver, who Mr. McDowell identified to me as the  
17 person that was on the working group here in  
18 Washington as a liaison with the Department of  
19 Justice and RTC, and identified to him to me as a  
20 resource person to go to to try to solve the problems  
21 that I was having with the Kansas City branch of the  
22 RTC.

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1 Q You believed that the problems you were  
2 having in getting documents were being caused by the  
3 Kansas City branch of the RTC; is that correct?

4 A That was my understanding.

5 Q That was your understanding at the time.  
6 Did you later have a reason to confirm that that was  
7 the case, that it was Kansas City that was holding up  
8 the records, or did you ever come to learn that it  
9 was another part of the RTC that was holding up the  
10 records?

11 A There's been no information provided to me  
12 that it was anyplace else. My experience with the  
13 RTC in Kansas City on unrelated investigations was  
14 that they were a problem to get records from. Had  
15 always been.

16 Q In general?

17 A Absolutely. In general they were slow to  
18 respond to subpoenas, they had been unresponsive to  
19 subpoenas in the past. This issue was not a new  
20 problem for either the FBI or our office. And this  
21 frustration was not brand-new. This had been  
22 something that had existed long term, and was,

1 frankly, a matter of tremendous frustration.

2 Q Did you have any understanding that matters  
3 related to subpoenas served on the Kansas City office  
4 for documents had to be reviewed by employees of the  
5 professional liabilities section in Washington, D.C.  
6 before they were dealt with?

7 A I have no idea what the RTC internal  
8 procedures were. I --

9 Q So you have no clear knowledge that it was  
10 Kansas City that was the problem, it could have been  
11 held up in Washington or some other branch; is that  
12 correct?

13 A My response is based on my personal  
14 experience with the RTC in Kansas City, and my  
15 conversations with other Department employees that  
16 did white collar crime work about their experience  
17 with the RTC in respective areas of the country at  
18 various seminars that I might attend. And while some  
19 people related similar stories that their experiences  
20 were enormously frustrating with the RTC, other  
21 people related stories that the RTC had been  
22 enormously helpful. And it did not seem to fall --

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1 it did not seem to be systematic across the country.

2 Q But what I'm asking you, Mr. Johnson, is on  
3 this specific occasion in this time period when you  
4 are trying to get records from the RTC in October and  
5 you are having problems getting productions of  
6 documents from the subpoena, do you have clear  
7 knowledge that it was a problem that the records were  
8 being held up by Kansas City as opposed to Washington  
9 or some other place internally within the RTC?

10 A The representation made to me by the FBI  
11 who represented that they had spoken to somebody  
12 associated with the RTC in Kansas City was that the  
13 reason the documents were not forthcoming is because  
14 the Kansas City office needed them to write these  
15 referrals. There was never any mention about review  
16 of subpoenas or time delay in subpoenas. That was  
17 the only reason ever provided.

18 Q To you, but you don't -- okay. And that  
19 was the information provided to you by the FBI?

20 A Absolutely.

21 Q Okay.

22 (Recess.)

1 BY MS. FISHER:

2 Q I believe that you testified earlier,  
3 before we went off the record, that you discussed  
4 with Mr. McDowell and possibly Mr. Carver getting  
5 records from the RTC?

6 A Yes.

7 Q Did you have any conversations with Webster  
8 Hubbell about this issue?

9 A No.

10 Q Did Mr. Carver or Mr. McDowell indicate to  
11 you that they had had conversations with Mr. Hubbell  
12 about this issue of getting records from the RTC?

13 A They did not.

14 Q Throughout this entire process, did you  
15 have any conversations with Webster Hubbell regarding  
16 the matters surrounding David Hale or Madison?

17 A No.

18 Q Are you aware of whether Ms. Casey had any  
19 such conversations?

20 A She has told me that she did not.

21 Q Are you aware or were you ever informed  
22 whether Mr. Coleman had any conversations with

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1 Mr. Hubbell regarding Mr. Hale's indictment or  
2 Mr. Hale's allegations?

3 A Mr. Coleman has never told me that, and  
4 I've never heard that.

5 Q Did Mr. Keeney inform you that he was  
6 having discussions with Mr. Hubbell about these  
7 issues?

8 A No.

9 MR. FISHMAN: Okay. There's an assumption  
10 in your question the way it's phrased.

11 BY MS. FISHER:

12 Q Did Mr. Keeney inform you that he was ever  
13 having --

14 MR. FISHMAN: It was just the way it was  
15 phrased.

16 THE WITNESS: No, he did not.

17 BY MS. FISHER:

18 Q Could you briefly describe for me what  
19 action was taken regarding the Madison investigation  
20 after the new set of referrals was received from the  
21 RTC in mid-October?

22 A I sat down with David Reign, I don't recall

1 whether Steve Irons -- my recollection is that Steve  
2 Irons also attended this meeting as did Gretchen Hall  
3 and Fletcher Jackson, and we discussed each  
4 referral. The FBI related to me their assessment of  
5 the referrals, which I had read at that time. They  
6 indicated to me which ones they thought should be  
7 prioritized. We talked about what kinds of  
8 documentation we needed to seek to assess the  
9 allegations and I asked them to make up specific  
10 subpoena requests which, at some point in time, I  
11 reviewed and made additions to.

12 I don't recall ever deleting any item they  
13 wanted, but I know I made additions to what they  
14 wanted to request. So some of the referrals they had  
15 not drawn up subpoena requests, and I requested that  
16 they do so. My view was that while there were  
17 several of them that they wanted to give first  
18 priority and others of them that they wanted to put  
19 in the status they called pending and active, meaning  
20 that it would not be actively worked but would still  
21 be pending, in other words second priority, that I  
22 wanted them to make -- I wanted them to draw up

1 subpoena request for the ones that would be the  
2 second level of priority so that we could initiate  
3 the process of getting those records now rather than  
4 waiting simply after we got the first priority  
5 starting to deal with those. So I wanted to get more  
6 comprehensive records.

7 One of the things that I discussed with  
8 them and suggested that we do is that we ask  
9 immediately for the RTC to provide us an inventory of  
10 all the records they had related to Madison, and  
11 there may have been one or two other institutions  
12 that we believed records were at whose records were  
13 also in possession of RTC. But I wanted a complete  
14 inventory, and I asked them to contact and arrange  
15 with the RTC a time for us to travel to Kansas City  
16 to review the records and assess what was there and  
17 make some plans to deal logistically with the volume  
18 and how many records we might need to take in our  
19 possession, and how to go about it from a logistical  
20 managerial standpoint, and that that meeting in fact  
21 was arranged.

22 Q After receipt of the second set of RTC

1 referrals relating to Madison Guaranty, did you  
2 discuss the recusal issue with Ms. Casey?

3 A That issue got raised again, and yes,  
4 Ms. Casey and I did have several discussions about  
5 it.

6 Q Do you recall when it was that you received  
7 the second set of referrals, is it 10/12 as noted on  
8 your chronology?

9 A Our office did not receive them on October  
10 12th. I think what's noted on my chronology is that  
11 Steve Irons from the FBI called and informed me that  
12 day that the FBI had received their copies.

13 Q If it's on here -- I'm sorry, I'm just not  
14 familiar with your chronology.

15 A That's okay. It's a legitimate question  
16 based on the chronology. I just didn't want you to  
17 misunderstand, because this chronology is not an  
18 attempt to record every event that occurred. It is  
19 simply made for me to help me recall some of the more  
20 significant of the many, many, many things that  
21 happened in a very short period of time.

22 But I do recall specifically that Steve

1 Irons called me on October 12th and advised me that  
2 they had received the referrals because we hadn't,  
3 and had received a call from Gerald McDowell earlier  
4 that day regarding the referrals and we hadn't  
5 received them and we had to go looking for our copies  
6 and did not get them until several days later, as I  
7 recall.

8 In fact I -- as best I recall, I had asked  
9 Steve Irons to make me a copy of his so that I could  
10 review them before we got ours. And as I recall, we  
11 set up a time for us to meet to talk about the  
12 referrals, but we had managed to get our copies  
13 before that meeting had occurred. But ours were  
14 received several days after the FBI got theirs.

15 Q Within a week?

16 A Best I recall, it would have been within a  
17 week.

18 Q And what were your discussions with -- what  
19 were your discussions with Ms. Casey regarding  
20 recusal at that time, after receipt of the second  
21 referral?

22 A After the receipt up until and including



1 November 5th? Or, I mean, you have more limited --

2 Q Yeah, I want promptly right after that  
3 time.

4 A This was the only issue during this entire  
5 process that Paula and I had a disagreement about.  
6 She felt after we received the second set of  
7 referrals that she should recuse, and it was my --

8 Q I want to stop you right there. Prior to  
9 the second receipt --

10 A No.

11 Q Did she have a view that she should recuse?

12 A She felt that she would have to recuse at  
13 some point, but as I said before, everything related  
14 to Madison basically was at a standstill because the  
15 RTC had what was needed to assess the allegations,  
16 and we couldn't get it.

17 Q Had she decided that she would recuse prior  
18 to receipt of the second set of referrals?

19 MR. FISHMAN: Recuse on what is the  
20 question, I think.

21 BY MS. FISHER:

22 Q Okay. On the Madison investigation.

1 A Only insofar as allegations concerning  
2 Tucker and Smith were concerned and possibly if there  
3 were allegations -- when the FBI outlined their  
4 allegations, I don't remember there being any  
5 allegations indicating that President Clinton was  
6 suspected of being involved in fraudulent activity,  
7 although it was known that he had been involved in  
8 transactions.

9 And so there was not a particular  
10 discussion that I recall that focused on recusal  
11 because of the President. The discussion about  
12 recusal was focused more on Tucker and Smith because  
13 those were people who the FBI represented to us they  
14 felt there was a sufficient basis to investigate.

15 Q And they made those representations prior  
16 to receipt of the second set of referrals?

17 A Absolutely they did. In September they  
18 made those.

19 Q September, prior to the September 20th  
20 conversation with Keeney?

21 A My best recollection is prior to -- no, not  
22 prior to the September 20th conversation with Keeney,

1 no.

2 Q Okay. Sometime after the September 20th  
3 conversation with Keeney and prior to the receipt of  
4 the second referrals, the FBI made it clear that  
5 Tucker and Smith may come up in their investigation?

6 A Right. And according to the document you  
7 showed me before, that occurred on September 24th.

8 Q That's your recollection of when that was  
9 made clear?

10 A Yes.

11 Q After receipt of the second set of  
12 referrals, you said this is when you and Ms. Casey  
13 had a disagreement as to recusal, and this relates to  
14 the Madison investigation?

15 A Yeah. It really -- actually our  
16 disagreement really on this subject began at the end  
17 of September. She was more of the view that she  
18 should just recuse. I was of the view and strongly  
19 urged her against recusal, in part because of the  
20 context it had come up in, having derived initially  
21 from the David Hale matter and Keeney's  
22 representations.

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1 I still felt that at that time an early  
2 recusal would incapacitate our office, that we had a  
3 responsibility to do more than just hear allegations  
4 before there was a recusal, that we had a  
5 responsibility to make some assessment of the merit  
6 of those allegations.

7 Q The second set of referrals, is that what  
8 you are referring to?

9 A I'm talking generally, I'm talking  
10 generally now.

11 Q Generally at this time frame?

12 A Yes, you are talking about the disagreement  
13 between Ms. Casey and I.

14 Q Right.

15 A It was really a philosophical difference.

16 Q Okay.

17 A Because at that time we didn't have  
18 anything but allegations.

19 Q That's what I was just asking, was it --

20 MR. FISHMAN: I think he testified that it  
21 started sort of at the end of September, that's how  
22 he started his answer.

1 THE WITNESS: Right. This really began  
2 after the conversation on September 24th. Paula was  
3 of the view that she could recuse early. I was of  
4 the view that we had a responsibility to do more than  
5 just hear an allegation that triggered a recusal. I  
6 was of the view that we had some responsibility to  
7 check it out and satisfy ourselves that there was a  
8 legitimate basis for investigation before she took  
9 steps to recuse.

10 And I thought that that was extremely  
11 important for our office, because otherwise, I felt  
12 we'd go through what David Hale had attempted to put  
13 us through every time we tried to do a significant  
14 case. And so I discouraged her from considering  
15 early recusal, and she basically agreed that she  
16 would not do anything with regard to recusal until  
17 after we received and assessed the second set of  
18 referrals.

19 When we received the second set of  
20 referrals, and I reviewed them, I don't remember  
21 precisely when I briefed her on them in general  
22 terms, but I know that I did brief her on them in

1 general terms. And she was of the mind at that time  
2 that she should recuse, and I still opposed that.  
3 And part of my opposition on that was, frankly, based  
4 on my having reviewed the first referral and feeling  
5 that the first referral was reckless in some of the  
6 conclusions that I pointed out to you earlier. And I  
7 had a great deal of discomfort basing a recusal  
8 simply on what the RTC investigator put in her  
9 referral.

10 I felt that Paula should not consider  
11 recusal until after I'd had an opportunity to go to  
12 Kansas City along with the FBI agents to make an  
13 assessment of the documents and to do some more work  
14 to feel more comfortable that the referrals warranted  
15 investigation, although that was becoming, if you  
16 look at this as a continuum, we were getting further  
17 down that, primarily because of, from my standpoint,  
18 because of the representations made to me by the FBI  
19 and not the representations made to me by the RTC.

20 Paula was of the view that she could  
21 recuse. We had a conversation about the possibility  
22 of her recusing but not the office recusing because I

1 had no basis to recuse. And she rejected that as  
2 being untenable for her to come in, with  
3 responsibility for the office with a case of that  
4 magnitude and scope, to be in the office and her to  
5 be sealed off from it. And that was a matter of some  
6 disappointment to me because, like I said, I had no  
7 reason to recuse from the case.

8 So she and I had different views of that.  
9 And at that time it was a matter of timing, and I  
10 considered the timing to be critical not so much on  
11 that case, but on the ability of our office to be  
12 effective.

13 BY MS. FISHER:

14 Q Did she take steps to communicate her  
15 decision to recuse to the main Justice at that time?

16 A She told me that she had a meeting planned  
17 in Annapolis. It was another meeting for a lot of  
18 the incoming U.S. Attorneys, and that was scheduled  
19 for right around the end of October, first part of  
20 November. And she told me that when she went to  
21 Washington, she was going to meet with the people in  
22 Washington she needed to meet with -- I don't

1 remember what specific names she mentioned -- and  
2 discuss the issue. And I urged her at the same time  
3 to discuss the issue with them about the continued  
4 difficulty we were having getting records from the  
5 RTC.

6 Q Did she tell you she was going to meet with  
7 Mr. Keeney or someone else?

8 A I don't remember who she indicated she was  
9 going to meet with. At that point she was, I think,  
10 relying primarily on input from the executive office  
11 about where she should go with this issue. Because  
12 neither she nor I were familiar with those inner  
13 workings of the Department, because she hadn't been  
14 in the Department and I hadn't been in a management  
15 position in the Department that I really understood  
16 very fully how that issue worked.

17 But somewhere in this process, Keeney, who  
18 was acting as the Assistant Attorney General, Jo Ann  
19 Harris came into the picture. I don't remember when  
20 she was confirmed, but she also entered the picture.  
21 So I don't know if Jo Ann was in as the assistant  
22 Attorney General for criminal at the end of the

1 October or not.

2 I know eventually, when Paula did meet with  
3 them, Jo Ann Harris was involved in the meeting, as  
4 was Jack Keeney. So I don't know who she planned to  
5 have the meeting with. It may have been with Phil  
6 Heymann. I know all three of them ended up  
7 participating in the meeting she had.

8 Q Is it your recollection that she had  
9 decided to recuse herself from these matters prior to  
10 her meeting that you just described?

11 A She clearly had.

12 Q Is it your understanding that she expressed  
13 that view at that meeting?

14 A No. That's not my understanding.

15 Q Is it your understanding that Ms. Casey  
16 said that she refused to recuse as of that meeting,  
17 at that meeting?

18 A No, that's not my understanding either.

19 Q Is it your understanding that she said she  
20 would think about it?

21 A That's closer to my understanding of what  
22 happened, yes.

1 Q Why don't you tell me what she told you  
2 about that meeting, I was trying to avoid --

3 A A narration. It would be brief. I'm sure  
4 Paula will be happy to tell you tomorrow.

5 She had certainly, she called me before the  
6 meeting occurred and told me that she was going to  
7 recuse. I believe it was before the meeting  
8 occurred, although it might have been -- I say that,  
9 I'm not so sure of that. I know she called me before  
10 she recused and we had a conversation after the  
11 meeting occurred. But she'd made it clear to me in  
12 September that eventually she was going to recuse  
13 from these things if in fact they were there and  
14 there was an investigation that was legitimate.

15 I think that she followed my advice,  
16 apparently to her detriment at this point in time,  
17 that she should not recuse early because of the  
18 potential impact it would have on our office  
19 concerning other matters. And as I understand it,  
20 when the Department -- all the people in the  
21 Department pressed her to recuse at this meeting in  
22 early November, it didn't sit too well with her even



1 though that's what she planned to do. And she got  
2 her backbone up a little bit about being pressured  
3 and did not initially and readily agree with them  
4 about recusal although she knew that's what she was  
5 going to do.

6 That's my understanding. So whether it  
7 came across to the Department as a refusal or -- I'll  
8 think about it -- it was Paula's intention before  
9 that meeting ever occurred, as communicated to me, to  
10 recuse, and not only herself but the entire office  
11 for the reasons that I indicated.

12 Q Did Ms. Casey express to you that she was  
13 upset with the way she had been treated at the main  
14 Justice regarding this issue?

15 A Yes, she did.

16 Q And did she tell you why, other than what  
17 you've just described if that is the reason? If  
18 there are other reasons, if you could explain those  
19 to me.

20 A I think she was upset about the way that  
21 she was -- pretty much what I just said. I think  
22 that she was also upset because I was upset with the

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1 Department of Justice and how we'd been treated.

2 Q And what is that treatment that you're  
3 referring to?

4 A I felt that the Department was not very  
5 understanding about the position we had been put in  
6 by David Hale. It was not at all supportive of the  
7 position we had been put in by David Hale and wanted  
8 to listen to some anonymous tipster rather than have  
9 faith in the U.S. Attorney's office in Little Rock,  
10 particularly in me, when I had been a Department  
11 employee for over 20 years.

12 I felt I had been shoved off to the side as  
13 having no valuable opinion on this matter. I felt  
14 the Department was not hearing about the problems we  
15 were having with the RTC not complying with our  
16 subpoenas. And I felt like I had to fight them to  
17 convince them that there was some legitimate point of  
18 view on our side. And by the end of October, I  
19 wasn't too happy with the Department of Justice  
20 because I felt like they were not being very  
21 supportive. I thought they were having a knee jerk  
22 reaction, manipulated by the press, and I didn't like

1 it.

2 Q Did you continue to feel that the  
3 Department's position was unreasonable as of November  
4 3rd after your office had received the second set of  
5 Madison referrals?

6 A I did. In fact when --

7 Q Was it your understanding that the FBI also  
8 had a view as to whether Ms. Casey should recuse  
9 herself from these matters?

10 A My conversations with the FBI is that they  
11 clearly understood that Ms. Casey would be recusing  
12 from the matters and the issue was one of time.

13 Q Was it your understanding that the FBI  
14 expressed a view as to whether --

15 A I have no idea.

16 MR. FISHMAN: Whether the FBI institutional  
17 or individuals at the FBI.

18 BY MS. FISHER:

19 Q Or individuals at the FBI expressed a view  
20 as to --

21 A No one ever expressed it to me.

22 Q Do you know whether they expressed it to

1 her?

2 A I have, as I sit here today, I have heard  
3 now that supposedly the director expressed that view  
4 to someone, but that was never communicated to us in  
5 1993.

6 Q And that you've heard how?

7 A Oh, I don't remember how I've heard. I've  
8 just heard that. I really don't remember. I think  
9 it may have been something -- I don't know. It may  
10 have been something that, when Paula did her House  
11 deposition. They asked her about and showed her a  
12 document relating to. I don't know, but I've heard  
13 that. I'm not even sure it's true. I've just heard  
14 that.

15 Q Given that she had decided to recuse  
16 herself from the ongoing Madison investigation, do  
17 you know why, after receiving the second set of  
18 referrals and knowing that she was going to or  
19 knowing that she had decided to recuse from the  
20 Madison investigation, she decided to decline the  
21 first criminal referral?

22 A The first criminal -- the letter to Jean

1 Lewis about the first criminal referral was viewed by  
2 Paula, and viewed by me, as a housekeeping matter of  
3 no particular consequence and certainly no impact on  
4 any investigation that was being conducted.

5 Q But what I'm asking you is, if she had  
6 decided to recuse from the Madison investigation, why  
7 was it necessary for her to decline the referral  
8 relating to Madison?

9 A Because the Department had asked her to  
10 notify Jean Lewis about the status of that referral.

11 Q Well, was it your understanding that it was  
12 the eastern district of Arkansas's decision to  
13 decline the referral or main Justice's decision to  
14 decline the referral?

15 A At that time I don't know who had decided  
16 to decline it.

17 Q Did you decide to decline it?

18 A No.

19 Q Okay. That eliminates one.

20 A I didn't decide to investigate it either.

21 Q Right. No, I'm just trying to --

22 A In October -- on October 27th in 1993 when

1 the letter went to Jean Lewis, there was no point in  
2 investigating the first referral.

3 Q But I'm trying to --

4 A Events had overtaken it. It was  
5 inconsequential.

6 Q But what I'm trying to get at is who made  
7 the decision to decline it. I understand your view  
8 as to the declination and I've heard that, but I want  
9 to try to ascertain who made the decision.

10 MR. FISHMAN: There are two different  
11 questions. If I can ask, do you mean the letter or  
12 the decision to decline?

13 MS. FISHER: I'm trying to get -- I know  
14 who wrote the letter. He said he didn't draft it; he  
15 said Ms. Casey drafted it. What I want to know is  
16 who made the decision.

17 THE WITNESS: Well, the problem I'm having  
18 with your question is I feel like it's assuming that  
19 there was focus on a decision other than  
20 notification.

21 BY MS. FISHER:

22 Q I don't care if there was focus on it. I

1 want to know who made it.

2 A Well, Ms. Casey and I did, I guess, because  
3 she drafted the letter. She gave me a copy of it to  
4 review and asked me if I thought that that was  
5 adequate and what we needed, how we needed to notify  
6 Jean Lewis. And I reviewed it and I said it looked  
7 fine to me, and she sent it.

8 It was my job in the U.S. Attorney's office  
9 as first assistant to decide what cases we would take  
10 in for investigation and what cases we would not take  
11 in for investigation. That was not a role that  
12 Ms. Casey took on. That was a responsibility that  
13 she gave me.

14 Q Is it your recollection that there were any  
15 discussions had with the Department of Justice  
16 regarding the October 27th declination letter  
17 sometime in this time period of October, other than  
18 the conversations from Ms. Henneman or Ms. Westbrook?

19 A My understanding, I know of none and I've  
20 not been told of any.

21 Q And do you have an understanding of whether  
22 Ms. Casey believed that the criminal referral C 0004

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1 had been declined when she wrote the October 27th  
2 letter?

3 A You'll have to ask her. I don't know.

4 Q I will. Do you recall whether, at some  
5 point, Ms. Casey's focus as to recusal shifted from a  
6 focus on a relationship with Governor and Mrs. Tucker  
7 to a relationship with now President Clinton and the  
8 First Lady?

9 A I don't think her focus about recusal ever  
10 shifted to that. I mean she was going to recuse  
11 because of Governor Tucker and Betty Tucker and  
12 because of Steve Smith. And I don't remember the  
13 referrals. It's been a long time since I've read the  
14 referrals. I don't want to be inaccurate, but I  
15 don't recall anything in the referrals, the second  
16 nine referrals indicating that Bill Clinton was a  
17 suspect.

18 Q So you don't recall any discussions with  
19 Ms. Casey about her relationship with President  
20 Clinton and/or the First Lady being a reason for her  
21 recusal?

22 A No. The only -- well, I say no. Let me be

1 sure I'm being accurate here. Have Paula and I ever  
2 talked about that, yes. Has she ever expressed the  
3 view that she would recuse because of that, yes. Did  
4 she express that in '93 in those terms, not to my  
5 recollection.

6 But certainly with the benefit of two years  
7 of agonizing history for both her and me, I believe  
8 that she would recuse on a matter brought to our  
9 office's attention implicating the President solely  
10 on the basis of the appearance of impropriety and  
11 certainly not on the basis of any relationship she  
12 has with him because she doesn't have the kind of  
13 relationship with him that would cause her to recuse.

14 Q Based solely on the fact that she was  
15 appointed by the President?

16 A The appearance of impropriety, the  
17 appearance to the public. Certainly at this time in  
18 1995 with how much Paula's been bashed in the media,  
19 yes, she would recuse on any matter.

20 Q Did you or your office have any contacts  
21 with Webster Hubbell at any time regarding criminal  
22 referrals coming out of the RTC relating to Madison?

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1 A Have I or my --

2 Q Or anyone in your office, to your  
3 knowledge.

4 A Not to my knowledge.

5 Q Relating to the Hale investigation?

6 A Not to my knowledge.

7 Q Relating to the Madison investigation being  
8 conducted by the FBI?

9 A Not to my knowledge.

10 Q Did you or anyone in your office have any  
11 contacts with any President or former employee of the  
12 White House relating to criminal referrals coming out  
13 of the RTC relating to Madison?

14 A Present employees of the White House, not  
15 to my knowledge. Past employees of the White House,  
16 I have no idea because I don't have any idea who the  
17 past employees of the White House are and whether any  
18 of them were working as private attorneys in some  
19 capacity that might have contacted me about a  
20 matter. That, I can't just, I just can't answer that  
21 part.

22 Q But to your knowledge?



1 A To my knowledge, no.

2 Q How about relating to the Madison  
3 investigation in general?

4 A No.

5 Q The Hale investigation?

6 A No.

7 Q Hale allegations?

8 A No.

9 Q Did anyone from the White House ever  
10 request documents from the U.S. Attorney's office  
11 relating to any of these investigations that we've  
12 been discussing?

13 A Not to my knowledge.

14 Q Do you have any knowledge or did you ever  
15 learn of any contacts between any member of the  
16 Department of Justice, including main Justice, and  
17 the White House regarding the criminal referrals  
18 relating to Madison?

19 A No.

20 Q The Hale investigation?

21 A No.

22 Q Or the Hale allegations?

1 A No.

2 Q Would you have any reason to call the White  
3 House or -- I'll take that back.

4 Did you have any contact with the White  
5 House between the time period of August of '93 to  
6 December of '93?

7 A No.

8 Q Do you know whether anyone in your office  
9 had any contact with anyone at the White House  
10 between September of '93 and December of -- August of  
11 '93 and December of '93?

12 A I have no idea.

13 Q But you have no knowledge?

14 A No.

15 Q Do you recall --

16 A I take that back. There was some point --  
17 I don't remember when this happened. I don't know  
18 that it was during that time frame, but I do recall  
19 at some point that Paula was in Washington for a U.S.  
20 Attorney's conference where I believe all the U.S.  
21 Attorneys were taken to the White House, but when  
22 that happened, I don't -- you'll have to ask her. I

1 know that she mentioned that to me, so yeah, I have  
2 that knowledge, but as to when that happened, I don't  
3 know if it meets that time frame or not.

4 Q Do you have any knowledge that Ms. Casey is  
5 familiar with any of the present employees of the  
6 White House?

7 A Present employees? I don't know. It  
8 wouldn't surprise me if she was. The ones from  
9 Arkansas. Arkansas is not very big.

10 Q Has she ever expressed to you any  
11 relationship she has with anyone?

12 A No. Boy, that's, ever expressed to me --

13 Q It's a broad question, but I think you  
14 understand what the information I'm getting at.

15 A Well, she's certainly not indicated -- I  
16 don't know all of who Paula's friends are. I've met  
17 a number of Paula's friends. She's probably  
18 mentioned a number of friends to me. Frankly I don't  
19 know who works at the White House except the names I  
20 hear in the media because not being from Arkansas,  
21 they're people I don't know. And whether she's ever  
22 mentioned to me she knows someone that also happens

1 to work at the White House, I don't know.

2 Q Did there come a time when you learned any  
3 information regarding a request from the White House  
4 relating to documents from the Small Business  
5 Administration or documents related to the Hale  
6 indictment?

7 A I learned of that today when Mr. Fishman  
8 asked me if I knew that, and I told him I'd never  
9 heard it before.

10 Q Did you discuss it any further with him?

11 A No.

12 MR. FISHMAN: Off the record.

13 (Discussion off the record.)

14 BY MS. FISHER:

15 Q Mr. Johnson, is it your understanding that  
16 Ms. Casey did indeed recuse herself sometime after  
17 the November 3rd meeting at main Justice?

18 A My understanding is that she recused  
19 herself by letter dated November 5th.

20 Q Did you have any further involvement in the  
21 Hale investigation after that, or the Hale case after  
22 that point?

1 A After November 5th, some minimal  
2 involvement as I remember. There was some question  
3 after the recusal whether the Department would take  
4 over the prosecution of the existing indictment or  
5 not, and it was ultimately decided that they would  
6 but I don't remember exactly when that decision was  
7 made. It was made sometime in November. It was not  
8 a long period of time.

9 And I certainly had involvement in briefing  
10 Don Mackay on what had transpired and where we were,  
11 and later, when the special counsel was appointed, in  
12 briefing him and his staff on the matters that had  
13 transpired during September and October until our  
14 recusal.

15 Q And that would be Special Counsel Fiske?

16 A Yes, and I have had involvement in some  
17 briefing of the independent counsel's staff when the  
18 independent counsel was appointed.

19 Q Did you have any -- other than these  
20 briefings, did you have any other involvement in the  
21 Hale --

22 A After November 5th?

---

1 Q Uh-huh.

2 A No.

3 Q How about the Madison investigation?

4 A No. Let me make sure you understand. I  
5 don't want to be inaccurate here. In addition to  
6 briefings, certainly until the appointment of their  
7 own grand jury, both the Department people and  
8 Special Counsel Fiske were utilizing the same grand  
9 jury as we were, and so I had a lot of dealings with  
10 them about logistics.

11 Substantively, no; of course their  
12 interview of me, the IC's interview of me about these  
13 matters and my subsequent grand jury appearance. I  
14 guess those would be involvements.

15 Q Do you recall at any time learning that a,  
16 quote unquote, prominent lawyer had gone to  
17 Washington to try to hinder the Hale investigation?

18 A I've heard that somewhere. I don't know  
19 when I've heard it or where I've heard it.

20 Q What's the extent of your understanding on  
21 that issue?

22 A That's about it. I mean, you know, I've

1 just heard that. I don't even remember who it was  
2 that supposedly did it or who they supposedly tried  
3 to meet with.

4 Q Did you ever learn that there were  
5 allegations regarding documents that were seized at  
6 Capital Management Services and the allegation that  
7 there was a missing document or missing documents?

8 A Somewhere in something, it's not anything  
9 that I heard in 1993, but certainly by now I have  
10 heard that Randy Coleman has made that claim or at  
11 least the claim is attributed to Randy Coleman,  
12 although I believe it was like thirdhand from a  
13 reporter that made that assertion that they'd been  
14 told that.

15 Q Do you have any knowledge of such a  
16 document?

17 A No.

18 Q Did you have any conversations with  
19 Governor Tucker about the Madison investigation or  
20 the Hale investigation?

21 A No.

22 Q Did Ms. Casey?

1 A Not to my knowledge.

2 May I -- I need to talk to Mr. Fishman.

3 MS. FISHER: Sure, absolutely.

4 (Witness conferred with counsel.)

5 THE WITNESS: In light of your last  
6 question, I want to be sure, that there is one thing  
7 in my chronology I want to draw your attention to  
8 that bears somewhat on the matter you just asked  
9 about. It's on the page that begins 11/2 and you'll  
10 see that the second item listed there is a phone call  
11 that I received from John Haley, who indicated that  
12 he was the attorney for Jim Guy Tucker. And he  
13 related to me that he had been dealing with the RTC  
14 on a loan that Tucker had received and indicated that  
15 Tucker had repurchased the loan, claimed the RTC  
16 couldn't find his file and that he had been told by  
17 someone in confidence that the matter had been sent  
18 to us for indictment and sent to a civil lawyer and  
19 that he wanted to put the matter to rest as soon as  
20 possible. He was asking us to move the matters along  
21 and get the chapter closed and that his client was  
22 available for interview to synopsize the facts.

1 Q Could you explain that to me?

2 A Sure. John Haley called me --

3 Q I mean other than what's in here, what is  
4 it that the indictment --

5 A I have no idea what Mr. Haley was talking  
6 about. This phone conversation occurred after the  
7 RTC referrals and their existence had been leaked to  
8 the press.

9 Q And this is the second set of referrals?

10 A Yes.

11 Q That had been leaked to the press prior  
12 to -- it was your understanding that it had been  
13 leaked to the press prior to November 2nd, 1993?

14 A I think there had been press articles  
15 already written about it and I certainly received  
16 lots of press calls about it.

17 Q And Tucker's involvement, was --

18 A Tucker's involvement was not particularly  
19 something that the press was concerned with, but by  
20 November 2nd I think there were probably very few  
21 people in this country that did not know of the  
22 existence of RTC referrals having been sent to us.

1 And John Haley called me -- and I had never met the  
2 man, had never talked to the man before to my  
3 knowledge -- indicated to me that he -- I'd heard the  
4 name and knew that he was an attorney in Arkansas --  
5 indicated that he was the attorney for Jim Guy  
6 Tucker, that he had been involved in matters with the  
7 RTC concerning some loans that Mr. Tucker had had at  
8 Madison that he was in some sort of negotiation or  
9 attempt to resolve about, that he represented to me  
10 that someone in confidence had told him that RTC had  
11 sent us this stuff to look at for criminal  
12 indictment.

13 Q Relating to Mr. Tucker's loan?

14 A Relating to Mr. Tucker's loan. And that he  
15 wanted to get the matter closed as quickly as  
16 possible and that he and his client wanted to be  
17 cooperative. That's what I understood him to be  
18 saying. At that point in time, I had started to make  
19 it a practice to try to write down whatever people  
20 said to me about the RTC and the referrals.

21 Q What did you tell him?

22 A I thanked him for his attitude and said I'd



1 get back to him.

2 Q At that time -- well, I guess this was a  
3 couple days prior to the recusal?

4 A Yes, the day prior to Paula's --

5 Q Did you discuss this phone call with Paula  
6 Casey?

7 A Oh, I'm sure I did.

8 Q Did you have any subsequent conversations  
9 with Mr. Haley?

10 A No.

11 Q Did Ms. Casey have any conversations with  
12 Mr. Haley?

13 A Not to my knowledge. I believe Paula was  
14 in Annapolis at the time I got this phone call and I  
15 would have talked to her -- it was our usual practice  
16 whenever she or I was out of town, for us to visit by  
17 phone, and I'm sure I would have related this to her  
18 by phone. But it was the following day that she met  
19 with the Department.

20 (Pause.)

21 Q After the recusal, did you have any further  
22 conversations with Mr. Coleman?

1 A No. I had one conversation with  
2 Mr. Coleman prior to the recusal that you haven't  
3 asked about, but I had no conversations with him,  
4 certainly about this matter, no. Mr. Coleman's  
5 office also happens to be in the same building as our  
6 office, and occasionally I would run into Randy in  
7 the hallway and exchange greetings, but no  
8 substantive conversations.

9 Q What was the conversation that you had  
10 prior to recusal?

11 A That occurred on October 21st.

12 Q What was that conversation?

13 A That conversation was a conversation where  
14 it appeared to me for the first time that Mr. Coleman  
15 was attempting to negotiate in good faith on behalf  
16 of David Hale. And he met with Paula and me in  
17 Paula's office and, for the first time, seriously  
18 listened to our proposed disposition of the case  
19 against his client, and, in fact, took the time to  
20 make notes of what our representations were and had  
21 been all along. At the end of our meeting we asked  
22 him for a copy of his notes so that we would all have

1 the same understanding of what had been discussed.

2 After he left I realized that we had  
3 omitted one matter and called him on the phone and  
4 asked him to add that Mr. Hale would have to make  
5 restitution and I handwrote that on the bottom of the  
6 copy of his notes and asked him to do that as well.

7 Q Did Mr. Coleman offer any information  
8 regarding --

9 A No, ma'am.

10 Q At that time?

11 A He did not.

12 MS. FISHER: Can we go off the record for a  
13 second.

14 (Recess.)

15 BY MS. FISHER:

16 Q Mr. Johnson, before we went off the record  
17 I believe it was your testimony that Mr. Hale offered  
18 no substance, in reference to his allegations at this  
19 October 21st, 1993 meeting?

20 A Mr. Hale was not present, just Mr. Coleman.

21 Q Mr. Coleman, pardon me.

22 A Yes, he did not.

1 Q Did you ever review documents relating to  
2 the Hale indictment or the Hale case?

3 A Did I ever review -- let me ask Mr. Fishman  
4 something here.

5 (Witness conferred with counsel.)

6 MR. FISHMAN: Just for the record, out of  
7 an abundance of caution because it involves a  
8 different related investigative matter Mr. Johnson  
9 wanted to ask me how he should handle the matter.

10 There is no reason why he can't answer the question.

11 THE WITNESS: There was a civil suit that  
12 was brought by an investor against Charles Matthews  
13 and Jean Fitzhugh sometime back in, I want to say '90  
14 or '91. And the attorney representing that investor  
15 asked us to look at that matter from a criminal  
16 standpoint. The transaction they were complaining  
17 about turned out to be part of the SBA fraud that  
18 Hale was eventually indicted on, although the focus  
19 of that allegation then was Matthews and Fitzhugh  
20 defrauding the investor, not about Hale. And I  
21 reviewed documents related to that at that time in  
22 '90 or '91, but I don't recall seeing any documents

1 that specifically related to Hale, or his business.

2 Q Who was it at the eastern district of  
3 Arkansas that did that review of documents relating  
4 to the Hale case?

5 A For the indictment, the case that he was  
6 indicted?

7 Q Uh-huh.

8 A That would have been Mr. Jackson.

9 Q Would there have been anyone else involved  
10 in that?

11 A From the U.S. Attorney's office, no.

12 Q Would Ms. Casey have reviewed those  
13 documents?

14 A No.

15 MS. FISHER: I don't believe I have any  
16 further questions.

17 (Discussion off the record.)

18 EXAMINATION

19 BY MR. SCHAUER:

20 Q Mr. Johnson, I just have a few more  
21 questions. It's not my intent to go over anything  
22 we've already covered but I might have to do that in

1 following up with some of the questions.

2 You had testified earlier that you had a  
3 good working relationship with the FBI agents that  
4 were working on the Hale matter. Was that Mr. Irons  
5 and Mr. Reign?

6 A Yes.

7 Q Did you have occasion to speak with  
8 Mr. Irons about contacts he had had with Jean Lewis  
9 at any time?

10 A Yes.

11 Q And what was the substance of those  
12 contacts as told to you by --

13 A As best I recall, Steve Irons was the one  
14 who expressed the frustration on behalf of the FBI  
15 concerning access to the documents at RTC. And my  
16 understanding from him was that he had contact with  
17 the RTC, and I believe specifically with Ms. Lewis  
18 but I'm not sure that every contact was with her, in  
19 attempting to get access to the documents. And it  
20 was from those contacts and her representations to  
21 him that I came to understand that the RTC insisted  
22 on keeping all of the records until they had

1 completed the referrals.

2 And Mr. Irons felt that that was neither  
3 necessary nor tenable, and was very adamant in  
4 seeking our office's intervention to get at least  
5 some of the records so they could begin their  
6 investigation, which we attempted to do so.

7 Q Did Mr. Irons ever express to you any  
8 concern about Ms. Lewis's motivations or manner of  
9 practice in the referrals as well as providing  
10 documents to the FBI?

11 A Best of my recollection is yes, he did.

12 Q And what was it that Mr. Irons told you?

13 A I know at some point there was conversation  
14 about the first referral and a lot of questions  
15 raised about its timing. A lot of questions raised  
16 about the pressure that the RTC seemed to be putting  
17 on it about when to do it. There were specific  
18 conversations with Steve Irons about the actions of  
19 the RTC in choosing to focus on the Madison Guaranty  
20 as opposed to other S&L institutions of much greater  
21 size in Arkansas that had failed, for which we had  
22 never gotten referrals.

1 And Steve was extremely frustrated to the  
2 point of being angry that for years and years and  
3 years we had been attempting to address the S&L  
4 failure issue in Arkansas and that we were  
5 persistently met with the RTC being a barrier rather  
6 than an assistance in our attempting to do so.

7 And when in fact our office recused itself  
8 from the Madison case, Paula Casey, Steve Irons and I  
9 sat down and had a long conversation about plans to  
10 go forward with other S&L investigations that we all  
11 believed needed to be done, for which we had never  
12 gotten referrals from RTC, and that we thought  
13 involved, in terms of dollar volume, much greater  
14 impact on Arkansas. And we discussed strategies and  
15 techniques to gain access to the information by  
16 bypassing any kind of reliance on RTC for referrals,  
17 and had set in motion plans and assignments of  
18 personnel in our office and the FBI office to  
19 implement that, when that fell by the wayside because  
20 Mr. Irons was assigned by the FBI to continue with  
21 the Madison case.

22 Q You mentioned that Mr. Irons had expressed

1 some concern -- if that's the word you used, I'm not  
2 sure -- relative to the timing of the first  
3 referrals. Could you elaborate on that?

4 A This is all subsequent understanding by me,  
5 and I'm not -- I don't -- I believe this is  
6 conversation that occurred mostly after the recusal  
7 by our office, because I knew nothing about when the  
8 first referral came and how it was dealt with and who  
9 did what when until much later, but I do recall later  
10 there being talk that that referral was sent just  
11 prior to the election and that the RTC particularly  
12 Jean Lewis, seemed very, very anxious for that to be  
13 handled prior to the election, unusually so for the  
14 RTC. And someone at some point quoted to me a  
15 statement that Jean Lewis had made to them that she  
16 would "bring down the administration."

17 Q Did Mr. Irons tell you that he believed  
18 that Ms. Lewis had political motivations in sending  
19 the first referral?

20 A I don't know that Mr. Irons did that. It's  
21 not what I associate with -- Steve is a very careful  
22 person about his choice of words, and I don't know

1 that that fits with Steve Irons. I know that other  
2 people have expressed that to me that they suspected  
3 Jean Lewis's motivation in the first referral and her  
4 actions subsequent. I certainly have come to be  
5 very, very suspicious of what she was doing in  
6 retrospect, given the frustrations that we had for  
7 two months of not getting anything. And as soon as  
8 Jean Lewis received Paula Casey's letter concerning  
9 the first referral, all of a sudden all the referrals  
10 are in the press.

11 And I know from contacts the press  
12 reporters had with our office, asking us questions,  
13 that they had met with Jean Lewis. I had asked the  
14 Department of Justice, prior to our recusal, to  
15 initiate an investigation concerning the leak of the  
16 RTC -- or of the referrals to the press. I was  
17 extremely upset about that because it's untenable to  
18 try to conduct that kind of an investigation when the  
19 media is all over it like they were.

20 Q Mr. Johnson, I want to show you now a  
21 document which is identified as Bates numbers GEM 187  
22 and 188, purporting to be notes taken by Gerry



1 McDowell?

2 MR. FISHMAN: Let me note for the record  
3 the Bates numbers by which they've been identified to  
4 the Committee are actually 004656 and 004657.

5 BY MR. SCHAUER:

6 Q Directing your attention, sir, to the  
7 second to last paragraph of these notes.

8 A Is this on the first page?

9 Q On the first page. Apparently because  
10 these are Mr. McDowell's notes and because your name  
11 appears at the top, and I think that your chronology  
12 indicates that you had a phone conversation with  
13 Mr. McDowell on the 2nd of November, that these are  
14 notes taken by him during the course of that  
15 conversation. Does that seem accurate to you?

16 A This is the first time I've ever seen the  
17 notes, of course, and in just quickly looking through  
18 some of the things that are on the notes, these seem  
19 to be consistent with the conversation that I recall  
20 having with Mr. McDowell, the subject matters of the  
21 conversation I recall having with Mr. McDowell.

22 Q Directing your attention, sir, to the

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1 second to the last paragraph which, if I can make out  
2 the handwriting, says -- and forgive me for reading a  
3 bit because the exhibits will not accompany the  
4 transcript -- "leak is RTC investigator Ms. Jean  
5 Lewis. She forwarded to EOUSA Donna Henneman all RTC  
6 referral copies. EOUSA had them before USAO with  
7 suggestion that USAO wouldn't fairly investigate.  
8 Extremely serious leak problem at RTC -- RTC jerked  
9 USAO/FBI around on documents -- unusual referral  
10 letter."

11 A Yes.

12 Q Does this accurately reflect things with  
13 which you were telling Mr. McDowell?

14 A Yes.

15 Q If we could start with the leak comment,  
16 and if you could expound on that?

17 A It's pretty much what I just said. Some of  
18 the -- if you'll look at my notes, my chronology,  
19 you'll see numerous, numerous phone calls from  
20 members of the press, not all of which are written  
21 down here. I spent most of the day of November 2nd  
22 answering press inquiries about the RTC referrals.

1 And numerous members of the press indicated to me  
2 that they had copies or had read copies of the RTC  
3 referrals. Somewhere in the course of that, I  
4 believe, from a comment one of the press people made,  
5 that the press person from The Washington Post had  
6 met with Jean Lewis the previous Sunday night in  
7 Kansas City.

8 I was personally -- it was my personal  
9 opinion at the time that Jean Lewis had leaked the  
10 referrals to the press and I was very, very angry  
11 about it. I have been involved in major  
12 investigations in which the press has been interested  
13 for most of my 20 years with the Department of  
14 Justice, certainly with the civil rights division. I  
15 can scarcely remember an investigation in which there  
16 wasn't tremendous press interest, and it was  
17 impossible to conduct a legitimate investigation of a  
18 matter of this kind involving these kinds of  
19 allegations when the press was running ahead  
20 speculating and causing problems.

21 And I considered it a tremendous act of bad  
22 faith on the part of RTC that they would prejudge our

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1 office and our handling of this matter that, before  
2 we ever got a chance to look at these referrals in  
3 any serious manner, that they had given them to the  
4 press.

5 Q Did you form an opinion at that point of  
6 why you think that Ms. Lewis or other people at the  
7 RTC would have leaked these to the press?

8 MR. FISHMAN: Are you asking him to  
9 speculate?

10 MR. SCHAUER: Sure.

11 THE WITNESS: I would have to --

12 MS. FISHER: That is inappropriate. Please  
13 don't speculate. We will be here until spring.

14 THE WITNESS: I won't speculate.

15 BY MR. SCHAUER:

16 Q Did Mr. McDowell indicate to you that he  
17 intended to do anything regarding this leak issue?

18 A No.

19 Q Did you have other discussions with anyone  
20 else at the Department regarding this leak issue?

21 A I believe that Mr. McDowell was the only  
22 one -- as best I recall, the only one that I talked

1 to when Ms. Casey met with everybody the following  
2 day. I certainly had asked her to put on the agenda  
3 the lack of production of documents that the RTC had  
4 put us through, and the leak issue, and was very,  
5 very frustrated that the only thing that -- she was  
6 very frustrated, as was I, that the only thing the  
7 Department wanted to talk about was her recusal.

8 That was part of her dissatisfaction with  
9 the Department. It was part of my dissatisfaction  
10 with the Department and I think part of her reason  
11 for bucking up some at that meeting, even though she  
12 was going to recuse.

13 Q Directing your attention, sir, to the next  
14 page of the document you have in front of you.  
15 Beneath the paragraph that was apparently redacted,  
16 it reads "RTC still has given over all the  
17 documents"?

18 A I think -- I can only, that's not true. I  
19 can only conclude that he has left the "not" out of  
20 there with the use of the word "still" because they  
21 had not, and, in fact, you'll see the next paragraph,  
22 maybe "inspection trip to Casey to find out what the

1 problem is with RTC" is certainly something we talked  
2 about.

3 I know that in that conversation I told  
4 Mr. McDowell that I had planned a trip to Kansas City  
5 to review the documents which I referred to earlier.  
6 That meeting was scheduled, I believe, for -- I want  
7 to say November 8th or certainly that week, and one  
8 of the -- and I never went because we recused, but  
9 when Paula advised me of the recusal, one of the  
10 things I asked her to be sure to pass on to Don  
11 Mackay was that that trip had all been set up and the  
12 FBI was prepared to go. And I believe Mr. Mackay  
13 went in my place.

14 Q Directing your attention, sir, to the  
15 sentence that follows the one I read, which says "MJ  
16 thinks RTC is out of control in Kansas City." Is  
17 that something that you had said to Mr. McDowell?

18 A I'm sure it is. There is his reference in  
19 the first paragraph you asked me about concerning the  
20 unusual referral letter that I received on October  
21 13th, or rather our office received, Mr. Jackson, on  
22 October 13th from Karen Carmichael about some RTC

1 records. That was, to say the least, odd and seemed  
2 suited more to what the RTC might request when  
3 producing documents for civil litigation and not in  
4 response to a subpoena. It was the letter that I  
5 talked with Mr. McDowell about that's the unusual  
6 referral letter. He asked me to fax a copy to him,  
7 which I did, and he was going to bring it to the  
8 attention of Allen Carver to be addressed, as my  
9 understanding was, with the working group between the  
10 Department of Justice and RTC here in Washington,  
11 because the RTC in Kansas City didn't seem to know  
12 what they were doing.

13 That was based on a number of contacts,  
14 including some phone conversations, I had with them  
15 where they asked a number of questions. They did not  
16 seem to know what they were doing.

17 (Discussion off the record.)

18 BY MR. SCHAUER:

19 Q Do you have knowledge of whether or not  
20 Mr. McDowell followed up with Mr. Carver regarding  
21 this issue?

22 A I don't recall. I know that at one point I

1 talked with Allen Carver and I can't remember if  
2 Mr. McDowell had briefed him a little bit on it or,  
3 in fact, whether Mr. Carver -- excuse me, Mr. Carver  
4 called me at the request of Gerry McDowell so that I  
5 could brief him on it, but I know that I talked to  
6 Allen Carver so I'm not exactly sure what  
7 Mr. McDowell did other than bring it to Mr. Carver's  
8 attention because it was not a surprise to Mr. Carver  
9 when we talked. And I don't remember which one of us  
10 initiated the conversation.

11 Q Did Mr. Carver indicate whether or not he  
12 was going to follow up on this matter?

13 A He indicated that he was going to follow up  
14 on the matter with the working group. He also  
15 indicated to me that based on what I was describing  
16 to him that he certainly found that to be atypical of  
17 his dealings with RTC and the information he had  
18 about RTC led to some confirmation that we were  
19 dealing with an office that was not well managed as  
20 opposed to institutional problem.

21 Q Following up, sir, with your testimony  
22 regarding Mr. Irons's frustration regarding the

1 failure of RTC to focus on other institutions rather  
2 than Madison, could you tell us a bit more about  
3 that, what those institutions were?

4 A I don't remember the names of all the  
5 institutions. I know that there were -- I can  
6 remember, I believe, two of them, one was Savers  
7 Federal Savings & Loan, which was a much, much larger  
8 institution than Madison and I don't believe we've  
9 ever received a single referral on Savers. Another  
10 was First Federal, and I need to check with Paul.

11 (Witness conferred with counsel.)

12 BY MR. SCHAUER:

13 Q In answer to my question I'm not asking you  
14 for names of specific institutions or specific  
15 transactions, just generally.

16 A I realize that. There is a specific  
17 referral that I could talk about in detail as  
18 evidencing the problem that I'm talking about, but to  
19 describe it in general terms, this last spring our  
20 office received a referral from RTC concerning a  
21 major institution.

22 The representation in the referral was that

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1 the fraud was in the \$8 million range. The events  
2 that the RTC related in the referral had culminated  
3 in late 1985. The information on which the RTC  
4 relied in making its referral was a conversation that  
5 the RTC people had had with the head of the  
6 institution. The conversation occurred in 1989.  
7 They did not send us the referral for six years after  
8 the conversation had occurred and we had at most five  
9 months to conduct an \$8 million fraud investigation.  
10 And by the time they referred the matter to us, all  
11 the documents on which we would have to rely had been  
12 dispersed with all the loans throughout the country  
13 and were no longer available.

14 That's an example of the kinds of problems  
15 that we've had with the RTC that has made me  
16 reluctant to rely on their representations about  
17 anything.

18 Q Did you discuss these matters with  
19 Mr. Irons?

20 A This one I didn't because, as I said, this  
21 occurred this year and Mr. Irons is assigned to the  
22 independent counsel's office so they've been



1 instructed not to have conversations with anybody  
2 about anything.

3 Q Did Mr. Irons indicate to you that he had  
4 had conversations with Jean Lewis regarding the  
5 priorities of the RTC Kansas City office,  
6 specifically why Madison was prioritized over the  
7 other institutions?

8 A I don't -- I know that Steve Irons  
9 represented to me that he had discussed that with  
10 somebody at RTC -- I believe it to be Jean Lewis  
11 because my understanding was that she was the  
12 investigator primarily assigned to the institutions  
13 in Arkansas -- about the priorities because he felt  
14 just because of the size of the institutions and  
15 suspicions of fraud that the other institutions were  
16 much more significant and should have been  
17 addressed. And that's, as I said before, very  
18 frustrating that the RTC was doing nothing and it  
19 appeared that the statute of limitations, even the  
20 extended statute of limitations would likely run  
21 before we ever got a referral.

22 Q Did Mr. Irons indicate to you whether

---

1 Ms. Lewis or anyone else in the RTC Kansas City  
2 office responded to his frustrations in any way?

3 A Only that she was working on these  
4 referrals and would get them as soon as she could,  
5 although -- and then she would address the other  
6 matters, as best I recall Mr. Irons telling me. But  
7 I also recall part of Mr. Irons's frustration -- in  
8 September when I became familiar with this  
9 investigation and became involved in this  
10 investigation is he was quite angry that these  
11 representations from the RTC about these referrals  
12 had dated back some significant period of time and,  
13 as he told me, they had been absolutely promised by  
14 July, and we were now into September and they were  
15 still telling us the same thing and we still weren't  
16 getting any records. So he was enormously frustrated  
17 at the delay.

18 Q And was it Mr. Irons's opinion, as he  
19 related it to you, that the investigation was slowed  
20 down by his failure to obtain documents from the RTC?

21 A It was virtually at a standstill.

22 Q And Mr. Irons had told you that?

1 A Whether he put it in those words or not, it  
2 certainly was my understanding from the conversations  
3 I had with him and David Reign, because there was no  
4 the manner in which you conduct that kind of an  
5 investigation without an assessment certainly of some  
6 initial documentation from which you develop leads,  
7 and you don't go out and interview people that may  
8 have been involved until you have either  
9 documentation to refresh their memory or if it  
10 happens to be a potential subject documentation with  
11 which to confront them.

12 And so not having the documents, they  
13 couldn't begin and that's my understanding of the  
14 process and my understanding of why the FBI was so  
15 frustrated and wanted me to push the subpoenas, which  
16 I did.

17 Q If I might go back to the conversations and  
18 negotiations surrounding Mr. Coleman's effort to  
19 engage in plea negotiations with your office, you  
20 indicated that Ms. Casey discussed with you her  
21 position that it would have been inappropriate to  
22 offer immunity or a mere misdemeanor charge for

1 Mr. Hale?

2 A Yes.

3 Q Can you tell us, I know you went into it a  
4 bit, but could you tell us exactly why you felt that  
5 was the case?

6 A Just based on my experience with the  
7 Department of Justice and particularly I'll draw on  
8 my experience in prosecuting both police brutality  
9 cases and political corruption and white collar  
10 crime. In my experience, when you're accusing  
11 someone that there is likely to be a natural jury  
12 bias in favor of and you are accusing them primarily  
13 relying on someone who says they participated in a  
14 crime with them, that as a prosecutor, you buy a lot  
15 of credibility problems to the point of not being  
16 able to convince a jury if you have been too lenient  
17 with the person who has been the coparticipant, that  
18 it's much more sellable to the jury from a  
19 credibility standpoint that someone who has been made  
20 to face at least a portion of their punishment by an  
21 acknowledgment of guilt and potential sentence is a  
22 much more credible witness in making those kinds of

1 accusations. And from a strategic standpoint David  
2 Hale as an immunized witness accusing the President  
3 of the United States of something for which no  
4 documents may exist struck me as total folly as an  
5 approach.

6 Q So in your opinion it wasn't even a close  
7 call?

8 A Not even close. And I would add apparently  
9 not in the special counsel's opinion either because  
10 we offered David Hale a single felony. The special  
11 counsel ended up requiring him to take two with the  
12 same sentencing consideration we offered. So I'm  
13 kind of surprised at the Monday morning  
14 quarterbacking because Mr. Fiske was a lot harder on  
15 David Hale than we offered.

16 Q As long as we're on that point I'd like to  
17 show you a document which purports to be a memo from  
18 Ms. Casey to Don Mackay dated November 9th, 1993 and  
19 it's identified as Bates number 016574. Take a  
20 minute.

21 (Witness reviewed the document.)

22 A Okay. I've reviewed it.

1 Q Have you seen this document before?

2 A I can't honestly say. It strikes me as  
3 somewhat familiar, and I don't remember if I've seen  
4 the document before or -- or whether it is, in fact,  
5 a printout from an E-mail that Ms. Casey may have  
6 sent Don Mackay.

7 Q Notwithstanding whether it's a document  
8 that you've actually ever seen before, does it  
9 refresh your recollection regarding Mr. Coleman's  
10 willingness to agree to a certain plea in November of  
11 '93?

12 A Yes, as I indicated before, the first time  
13 that I believe Randy Coleman was negotiating with us  
14 in good faith was when we met with him on October --  
15 excuse me, yes, October 21st and this response by  
16 Randy Coleman was in response to that meeting on  
17 October 21st in which to a great extent for the first  
18 time he's indicated that he is willing to enter a  
19 plea on the basis that we outlined. Although this  
20 doesn't cover everything that we discussed on October  
21 21st and there was still some questions left to be  
22 resolved, including Mr. Hale's availability to give a

1 proffer to the investigators who would have the  
2 details about which to ask him to determine whether,  
3 in fact, he had information that would merit us  
4 making a motion on his benefit for sentence  
5 reduction.

6 Q So to your knowledge, at that time  
7 Mr. Coleman had not made a proffer?

8 A He had not. He still had not.

9 Q To your knowledge has he ever?

10 A My understanding from the media is that  
11 Mr. Hale has made a proffer to the IC's office or to  
12 the special counsel's office, but we were long out of  
13 the case before he ever got around to that, although  
14 it's my belief that we had laid the groundwork for  
15 that to occur with our negotiations with Mr. Coleman,  
16 as evidenced by the fact that before Don Mackay was  
17 assigned to the case Mr. Coleman was responding to  
18 our discussion on October 21st of what the structure  
19 of the plea agreement would have to be.

20 Q Directing your attention to item 5 of this  
21 memorandum. It indicates Hale would not be  
22 restricted from participating in Congressional

1 inquiries if requested by Congress to participate.  
2 Do you have any recollection of that matter being  
3 discussed in any conversations you had with Randy  
4 Coleman?

5 A I have no recollection of that matter being  
6 discussed on October 21st or any other conversation  
7 with Mr. Coleman. I can review the notes of October  
8 21st to see if I am remembering inaccurately, but I  
9 don't recall that being discussed.

10 Q Directing your attention to item 6, it  
11 indicates that Steve Irons will be involved in any  
12 further investigations and prosecutions by the  
13 government.

14 Do you have any recollection of that being  
15 discussed in the context of Randy Coleman?

16 A No, I don't. No.

17 Q Do you have any idea why that would have  
18 been included?

19 A Why Randy Coleman would insist on that, I  
20 have no idea.

21 Q Sir, you testified earlier that after  
22 reviewing the first RTC referral that you had never

1 seen a referral like it prior to that or since. And  
2 I think by that you were referring to a referral  
3 based on, if you will, an internal check kite?

4 A Yes.

5 Q Did it strike you as strange that that was  
6 the allegations in the referral?

7 A It certainly struck me as odd, yes.

8 Q Why is that, sir?

9 A My experience in dealing with fraud  
10 investigations, the investigations look more at the  
11 process of acquiring a loan or engaging in  
12 development project or the repayment of that or the  
13 sale and disposition of that or the refinancing of  
14 it. Those are the areas, in my experience, that the  
15 S&L problems and the fraud related activity had  
16 occurred, and for this referral not to take a  
17 transaction approach to these transactions of which  
18 the internal check kite might have been some evidence  
19 in -- but to focus on the internal check kite and by  
20 implication thereby suggest that everybody whose name  
21 might have been associated with that project had  
22 knowledge and some criminal liability struck me as

1 reckless and focused on the wrong thing.

2 Q I'll move the conversation along to the  
3 issue of Ms. Casey's recusal. You have indicated  
4 that you took a different philosophical approach to  
5 the recusal than Ms. Casey?

6 A Yes.

7 Q In your discussions with Ms. Casey in which  
8 you indicated that you didn't think she should recuse  
9 at an early stage, did she bring up the possibility  
10 of the office recusing -- her recusing but the office  
11 continuing?

12 A She did not bring up that subject. I  
13 brought that subject up to her. We did discuss that  
14 matter, and she rejected it. And frankly, on that  
15 aspect of her recusal though I was disappointed with  
16 that prospect, I understood her reasons for rejecting  
17 it and thought they were sound. They primarily were  
18 that it was untenable for her to attempt to become  
19 the U.S. Attorney and manage the office with having  
20 something that was going to demand so many resources  
21 and so much attention and so much focus being handled  
22 by the office and her not being able to be apprised



1 of anything concerning that. So I thought her  
2 decision that it was either the entire office or  
3 nothing was a correct one, although I didn't  
4 particularly like it.

5 Q Regarding the timing of her recusal after  
6 she had decided that ultimately she would, in fact,  
7 recuse herself, did you have any indication that that  
8 timing was based on some effort to delay the  
9 investigation or otherwise hinder anyone's ability to  
10 investigate the Madison-related matters?

11 A Absolutely not. I will tell you that when  
12 Ms. Casey called me from Washington after her meeting  
13 on November 3rd and told me that she was going to  
14 recuse, I still opposed it and I tried to talk her  
15 out of it on the phone, and I probably was pretty  
16 adamant about that and she was equally adamant that  
17 she was going to do it, that it was time. I tried to  
18 convince her to wait until at least I went to RTC in  
19 Kansas City the following week and she pretty much  
20 just said, Michael, this has got to happen sooner or  
21 later. It's just time. We need to let go. But at  
22 no time did Paula Casey do anything to impede the

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1 manner in which the investigation occurred. In fact,  
2 my view of the process is that Paula Casey relied on  
3 my experience and my advice.

4 She followed my advice on every aspect of  
5 this matter with the exception of the ultimate  
6 recusal and she did -- she permitted me to do  
7 everything that I thought that was essential for the  
8 investigation and permitted me to make the decisions  
9 about what should and should not be done and in no  
10 way attempted to limit anything that was done.

11 Q Did you ever have any feelings that anyone  
12 from the Department of Justice or anywhere else was  
13 pressuring you to carry out that investigation in any  
14 particular manner?

15 A No.

16 MR. SCHAUER: That's all I have.

17 EXAMINATION (Continued)

18 BY MS. FISHER:

19 Q I just have a couple follow-ups. When you  
20 were discussing -- previously when you were  
21 testifying about the priorities of the different  
22 S&Ls, you weren't sure at this time whether FBI was

1 conducting an investigation itself into Madison?

2 A Yes. The FBI had an interest in  
3 investigating Madison, but certainly not to the  
4 exclusion of the other S&Ls.

5 Q I see. Do you know what kicked off that  
6 FBI interest in investigating Madison?

7 A I do not.

8 Q Isn't it your understanding, or is it your  
9 understanding that the nine subsequent referrals  
10 relating to Madison are the subject of ongoing  
11 investigations now with the independent prosecutor?

12 A That's my understanding.

13 Q When you were testifying regarding certain  
14 leaks that had occurred regarding the referrals, it  
15 isn't your testimony, is it, that someone told you  
16 that Ms. Lewis had leaked the documents?

17 A No. Nobody directly told me that.

18 Q And when you were discussing the delay of  
19 documents, I believe that you referred to a letter  
20 that I'm going to show you. I think that this may be  
21 the letter that you are referring to and it's -- 7109  
22 is the Bates number, dated October 13th from Karen

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1 Carmichael to Fletcher Jackson and Steve Irons?

2 A Yes.

3 Q And this letter relates to the subpoena  
4 issue; correct?

5 A Yes.

6 Q And this letter is not from Ms. Lewis, this  
7 is from Ms. Carmichael; correct?

8 A That's correct. I didn't say it was from  
9 Ms. Lewis. What I said is that the RTC in Kansas  
10 City seemed not to understand or comprehend what they  
11 were doing. Based on my experience with them, one  
12 facet of that problem was Ms. Lewis, with whom I had  
13 direct experience only one time and that was a brief  
14 phone conversation about an entirely unrelated  
15 matter -- I was relying on what the people I worked  
16 with reported to me concerning their contacts and, of  
17 course, this letter which was brought to my  
18 attention. It was one of the matters that I referred  
19 to Gerry McDowell during our conversation on November  
20 2nd.

21 Q But this letter wasn't from Ms. Lewis or  
22 someone in her division?

1 A I don't know whether Karen Carmichael is in  
2 the same division as Jean Lewis or not but it's  
3 signed by Karen Carmichael.

4 Q Okay. I just wanted to be clear because it  
5 certainly is the impression from your previous  
6 testimony that it was directly Ms. Lewis that was  
7 holding up the production, and I wanted to make clear  
8 whether you had direct knowledge that that was the  
9 case.

10 A That was the representation made to me by  
11 Steve Irons.

12 Q That it was Ms. Lewis directly?

13 A That Ms. Lewis was working on the referrals  
14 and Ms. Lewis said she needed to keep all the  
15 documents there so they could write her referrals.

16 Q Do you know whether Mr. Irons had  
17 conversations with Ms. Carmichael about receipt of  
18 the documents?

19 A I never heard any indication from Steve  
20 Irons that he had ever talked to Karen Carmichael.  
21 My best recollection when we got this letter and  
22 started asking one another what the heck this was

1 with is that no one was familiar with Ms. Carmichael  
2 prior to the receipt of this letter.

3 MS. FISHER: I think that's all the  
4 questions that I have. Thank you.

5 (Discussion off the record.)

6 BY MS. FISHER:

7 Q Mr. Johnson, is it correct that subpoenas  
8 were served on the RTC for records relating to  
9 Madison prior to the time that the RTC criminal  
10 referral C 0004 was declined by Ms. Casey?

11 A Yes, not only were subpoenas served, but as  
12 I indicated before, meeting with the agents and  
13 outlining the referrals -- they produced several  
14 requests for subpoenas that they had on a form that  
15 were typewritten. I added some items to it. Those  
16 subpoenas were served and I requested them to put  
17 together requests other subpoena requests on the  
18 other referrals so that we could go ahead and send  
19 those.

20 All of that was independent of the first  
21 referral, but those had already been served on RTC  
22 prior to Paula's letter dated October 27th.

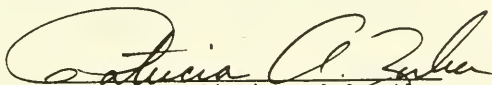
1 MS. FISHER: Okay. Thank you.  
2 (Discussion off the record.)  
3 (Whereupon, at 8:00 p.m., the deposition  
4 was concluded.)  
5

6 -----  
7 MICHAEL D. JOHNSON  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000





JUL 12 '96 03:32PM US ATTORNEYS OFFICE



U.S. Department of Justice

P.2

*United States Attorney  
Eastern District of Arkansas*

Post Office Box 1229

Little Rock, Arkansas 72203

July 12, 1996

Mr. Robert J. Giuffra, Jr.  
Chief Counsel  
United States Senate  
Committee on Banking, Housing,  
and Urban Affairs  
Washington, DC 20510-6075

Dear Mr. Giuffra:

This letter is in reference to my review of my deposition which you forwarded to me to correct and retransmit to you.

Yesterday, I had my secretary overnight to you a copy of the deposition with changes noted through page 142 of the deposition. I found one additional matter in the deposition that needed to be corrected. That matter is on page 183 at line 22 where it refers to "Casey". That reference was to "KC", referring to the city of Kansas City. The reference in the deposition was not to Paula Casey.

If you have any questions concerning this matter, you can contact me at 501-324-6566.

Sincerely yours,

PAULA J. CASEY  
United States Attorney

By MICHAEL D. JOHNSON  
First Assistant/Chief,  
Criminal Division

MDJ:bko

cc: Mr. Lance Cole  
Mr. Paul Fishman

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CHRONOLOGY-1993 and 1994

3/1 Chuck and Mac leave  
 3/1 Submitted Nabors/Keltner RICO memo to DOJ  
 3/11 Grand Jury meeting  
 3/16-17 Grand Jury  
 3/17 Nabors/Keltner superseding indictment  
 3/25 Nabors arrested and arraigned  
 3/29-4/10 Chandler preparation and trial  
 4/15 Grand Jury meeting  
 4/20-21 Grand Jury  
 4/20 Nabors/Keltner 2nd Superseding Indictment  
 5/12 Grand Jury meeting  
 5/13-15 Naples, Florida with Kay  
 5/18-19 Grand Jury  
 5/28 Sentencing Guideline seminar (Little Rock)  
 6/3 Gang Seminar (Hot Springs)  
 6/10 Grand Jury meeting  
 6/14-15 Tovey trial  
 6/15-16 Grand Jury  
 6/16-20 NITA (Dallas)  
 6/17-18 St. Louis (Chadwick argument)  
 8/3 Subpoena to RTC re: [REDACTED] J.N. (ELATO) M.H. (HOL) - redacted  
 8/4 Kay's MRI  
 8/12 Grand Jury meeting  
 8/16 Paula starts

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8/16

Telephone conversation with Annie Lewis-Richardson, RTC  
 Redacted [UNRELIABLE MATTER] re: [REDACTED]

8/17-18 Grand Jury

8/19 Kay's surgery

8/20 Hearing on Nabors/Keltner motion to dismiss

9/1 F. Jackson GJ subpoena to RTC for [Redacted - Grand Jury  
 matter]

9/7 Appointed 1st Assistant

Redacted [UNRELIABLE MATTER]

9/7 Phone call from Jean Lewis, RTC, re: [REDACTED]

Wanted address to help locate records. Probably referred  
 to Scott Hogue. [REDACTED]

UNRELIABLE MATTER -  
Redacted

9/7 Paula's meeting with Randy Coleman

9/13-14 St. Louis (Melson argument)

9/15 F. Jackson GJ subpoena to RTC for [Redacted - Grand Jury  
 matter]

9/15 Coleman letter to Paula complaining about plea  
 negotiations.

9/16 Grand Jury meeting

9/16 Paula's letter to Coleman re: plea negotiations. Willing  
 to listen, but Hale has rejected felony plea.

9/18 Paula to San Antonio

9/20 Phone conversation with Randy Coleman. I told him that  
 we are ready and willing to take any proffer his client  
 had to offer but that his client would have to plead to  
 felony and would get 5K motion.

9/20 Coleman faxed letter re: asking to seal indictment; plea  
 negotiations at a standstill.

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9/20 Fax of letter from me to Coleman

9/20 Phone call from Jack Keeney, Acting AAG, Criminal re: Hale. Asked that I fax letters which I did. Gave me names of Gerald McDowell, Public Integrity and Joel LNU

9/20 Fax letter from Coleman re: my letter. Calls my response "eleventh hour" attempt and raises for first time undercover operation.

9/20 Fax of Coleman letter to Keeney

9/20-22 OIA Conference, Alexandria, Virginia  
Left 9/20 at 6 pm.; returned 9/23 at 2:40

9/21 Phone conversation with Jack Keeney re: Coleman letter and proposed response. Keeney discusses Paula recusing itself. I oppose.

9/21 Several phone conversations with Paula in San Antonio re: above.

9/21 Fax of Coleman letter from Valerie

9/21 Instructed Valerie to Fax Coleman letter to Keeney

9/21 Dictated letter to Valerie for Paula's signature re: response to Coleman letter of 9/20  
Redacted - [UNRECORDED MATERIAL]

9/22 RTC Compliance on [ ]

9/22 Hale indictment

9/23 Fax from Valerie to me

9/23 Paula return from San Antonio. My return from Alexandria.

9/24 Meeting with Irons and Whitehead

9/27 Met with Steve Irons and Jane Erickson re: Madison investigation. Re: manpower and problems with RTC re:



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getting records.

- 9/27 Phone call from Chris Valasto, ABC News, NY. re Hale indictment. Wanted Fax copy. Referred him to Press Release.
- 9/29 Phone call from Jeff Morrell, Channel 7 News, re: David Hale. I believe he wanted response to Hale assertion that he had been offered plea bargain and would supply Morrell documentation. I gave no comment.
- 10/1 Office move. Staff off
- 10/5-7 Docket reviews
- 10/7 Conference call from Phil Adams and Karen Carmichael, RTC, re: John Latham plea agreement in Madison case. Also asked about Bill Henley and George Betts. I told them that I would get information and respond.
- 10/8 Telephone call from Steve Irons re: Hale search on 7/21. Warrant issued 7/20. Probably in response to press speculation that Foster death in relation to Hale warrant.
- 10/12 Paula's swearing in
- 10/12 Phone call from Gerald McDowell re: RTC referrals. Told him of our trouble getting records from RTC and that we had not received referrals. He gave me Alan Carver's name and number re: Bank Fraud working group for me to get help. Asked for summary for Keeney re: RTC difficulties.
- 10/12 Phone call from Steve Irons advising me that FBI had received 9 referrals from RTC.

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10/13 Carmichael letter re: RTC records

10/14 Grand Jury meeting

10/18 Randy Coleman meeting (?)

10/19 Phone call from David Reign re: authorization for subpoena to RTC for records.

10/19-20 Grand Jury

10/20 GJ subpoena to RTC

10/21 Draft of Paula's letter to Jean Lewis re: 1st referral

10/21 Randy Coleman meeting

10/25 Gj subpoena to RTC

10/27 Paula's letter to Jean Lewis re: 1st referral

10/31 Post article on referrals

11/1 Lewis return letter to Paula

11/2 Met with Steve Irons, Dave Reign and Fletcher re: referrals and subpoenas.

11/2 Fax of Carmichael letter from me to McDowell

11/2 Phone call from Mark Terrison, EOUSA, re: RTC. Don't recall contents of call

11/2 Phone conversation with Gerald McDowell re: RTC. I told him that we were planning to go to Kansas City to review and obtain records. He asked about Paula's recusal. I told him that I thought it was untimely until records could be reviewed. I faxed RTC letter from Carmicheal to him. Advised him that Paula had told me of Jean Lewis contacts with Donna Hennaman. He said he would get referrals from Hennaman. Discussed whether DOJ should initiate leak investigation re: press access to

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referrals.

- 11/2 Phone call from Sarah Coke, NY Post re: RTC referrals. Told her that I could make no comment including whether we had pending case or not.
- 11/2 Phone call from John Haley re: Jim Guy Tucker. Haley advised that he had been dealing with RTC re: loan that Tucker had. Said that Tucker had repurchased loan. RTC couldn't find file. Told by someone in confidence that that RTC had sent the file to us for indictment and sent file to local civil lawyer. Stated that he wanted to put the matter to rest as soon as possible and was asking us to move matters along and get chapter closed. He stated that his client was available for interview to synopsize facts.
- 11/2 Phone call from Doug Franz, LA Times re: RTC. At local hotel. I told him no comment.
- 11/2 Phone call from Matthew Sol, CNN, re: RTC and Madison Guaranty. Asked about Hale allegation that Paula was unfair. I told him no comment.
- 11/2 Phone call from Jonathan Groves, Democrat re: RTC. No comment.
- 11/2 Phone call from Mike Isokoff, Wash. Post, re: RTC. I told him no comment. He asked why. I told him that, as a matter of general policy, we do not comment about whether we have an investigation. He asked whether we could objectively evaluate case. I told him that we always objectively evaluated case.

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11/3 Phone call from Mark Terrison, EOUSA re: info on referrals from RTC.

11/4 Phone call from Alex Martin, Miami. Called to tell me that he could help re: "Clinton and contra-Clinton". Claimed to have helped Winston Bryant with Mena airport. Named several financial institutions that he thought were involved including Madison.

11/4 Phone call from Alan Roston and Alan Frank, ABC News, NY. re: Madison. No comment.

11/5 Paula's recusal

11/6-10 NITA, Minneapolis

11/8 RTC letter indicating that documents that we wanted to look at are available

11/9 Don MacKay named to head investigation

11/10 Grand Jury meeting

11/10 MacKay in Little Rock

11/14-15 D.C. for arson conference

11/16-17 Grand Jury

12/14-15 St. Louis (Campbell argument)

12/20-1/4 Monica's visit

1994

1/11 Phone conversation with Don McKay re: grand jury time needed. Grand Jury may not be released until Friday.

1/11 Phone message from Adam Pertman, Boston Globe re: Madison. Left local number. Did not return call.

1/12 Phone message from Adam Pertman, Boston Globe re: Madison. Left local number. Did not return call.

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1/13 Grand Jury meeting

1/14 Monticello (evidence seminar)

1/18 Phone conversation with Joel Williams, AP, re: whether regular grand jury was meeting. Wanted me to comment about subpoena to McDougal. I directed him to MacKay and Stern. Refused comment. Asked why. I told him that we do not comment about grand jury matters at any time.

1/18 Phone conversation with Matthew Sol re: Whitewater. No comment.

1/19 Phone conversation with Dwight Smith, OTS, DC, re: FOIA request for Borod and Huggins report. He said that it allegedly had been made public in connection with indictment. It had been commissioned by Board of Directors.

1/18-20 Grand Jury.

1/21 Phone conversation with Matthew Sol, CNN, re: when Fiske would be in town. No comment.

1/21 Phone conversation with Claire Chiapeta, CBS, Dallas re: when Fiske would be in town. No comment.

1/25 Phone conversation with Julie Stewart, AP. Wanted to know about subpoena to Tucker. I told her grand jury subpoenas were secret.

1/26 Phone conversation with Suzanne Taylor. Wanted to know where to send information re: Whitewater. Referred her to Steve Irons at FBI.

1/28 Phone conversation with Gloria Berry, RTC, DC. Ellen Kruger is new general counsel. Re: indictment on Susan



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McDougal. Suggested they contact LA re: new McDougal fraud charges. Wanted to know about McDougal divorce and location. Told them I didn't know.

- 1/31 Phone conversation with Christopher Wood who identified himself as an economist. Wanted record of S&L prosecutions in Arkansas. Referred him to Carl Stern.
- 2/1 Meeting with Fiske and Julie O'Sullivan
- 2/3 Phone message from Peggy Harris, AP.
- 2/4 Phone conversation with Peggy Harris, AP re; estimates of loss to white collar crime.
- 2/4? Conversation with Patrick Smith, SC office, re: indictment format, discovery motions, GJ motions, trial briefs. I told him that I would have law clerk make an index of research material on hand.
- 2/9 Meeting with Pat Smith (Special counsel)
- 2/14 Phone call from Dennis McInearney, SC office.
- 3/7 Phone conversation with Ann Farris, NY reporter. Wanted to know about meeting Fiske had last Thursday. Referred her to Fiske's office.
- 3/21 Phone conversation with Dennis McInearney.
- 4/5-8 Annapolis (Management conference)
- 4/12-13 Ghent argument (St. Louis)
- 4/21-5/25 China
- 6/1-2 Office retreat at Mountain Home
- 6/5-7 San Antonio (Federal Practice Seminar)
- 6/12-13 St. Paul (Smith argument)
- 6/13-19 NITA (Dallas)

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7/17-22 Atlanta (Office evaluation)

7/26 Staff meeting for deposition with Lou Defalaise

7/31-8/5 D.C. (Advanced Criminal Seminar)

8/11 Phone conversation with Matthew Sol, CNN, re: whereabouts  
of George Proctor.

9/8-9 D.C. (Ethics presentation to JoAnn Harris)

9/14-21 Spokane

10/10-11 St. Paul (Nabors argument)

10/13-15 San Diego (USA Conference)

10/17-20 D.C. (Ethics Conference)

11/2-7 Minneapolis (NITA)



**DEPOSITION OF ROBERT M. McNAMARA, JR.  
IN RE: S. RES. 120**

**TUESDAY, OCTOBER 24, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of ROBERT M. McNAMARA, JR., called for examination pursuant to notice of deposition, at 9:40 a.m. in Room 640-A of the Hart Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

BARBARA C. STERGIS, Esq.  
BRADLEY A. BUCKLES, Esq.  
Office of the General Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC 20220  
On behalf of the Deponent.

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## P R O C E E D I N G S

1 MR. O'CALLAGHAN: This deposition is being  
2 conducted pursuant to Senate Resolution 120. The  
3 resolution establishes a special committee  
4 administered by the Banking Committee to conduct an  
5 investigation involving Whitewater Development  
6 Corporation, Madison Guaranty Savings & Loan  
7 Association, Capital Management Services,  
8 Incorporated, the Arkansas Development Finance  
9 Authority and other related matters.

10 Section 1(b)(2)(e) of Senate Resolution 120  
11 authorizes investigation and public hearings into  
12 "whether the report issued by the Office of  
13 Government Ethics on July 31, 1994 and related  
14 transcripts of deposition summary, one, were  
15 improperly released to White House officials or  
16 others prior to the testimony before the Committee on  
17 Banking, Housing and Urban Affairs pursuant to Senate  
18 Resolution 229 or, two, were used to communicate to  
19 White House officials or to others confidential RTC  
20 information relating to Madison Guaranty Savings &  
21 Loan Association or Whitewater Development

4

1 Corporation."

2 That portion of the resolution will mainly  
3 be the focus of today's deposition.

4 Were you requested to testify on October  
5 12, 1995?

6 MR. MC NAMARA: I don't know. I got a  
7 request. What was the date of the request? You have  
8 the record.

9 MR. O'CALLAGHAN: Just if you recall if it  
10 was the 12th.

11 MR. MC NAMARA: I got a letter.

12 MR. O'CALLAGHAN: This deposition is in  
13 advance of public hearings which will most likely be  
14 early November. It will be likely you will be asked  
15 to testify at the hearing. We will ask you a series  
16 of questions today, ask you to testify under oath.

17 If you don't understand a question, you  
18 will let me and Mr. Portnoy know and we will rephrase  
19 the question. If you need a break, let us know as  
20 well.

21 The stenographer will prepare a record of  
22 questions and answers. The deposition will be

1 treated as committee confidential until the  
2 commencement of the hearings, and we also ask that  
3 you keep the contents of the deposition  
4 confidential.

5 MS. STERGIS: As with the other  
6 depositions, Treasury for the record will state it  
7 doesn't accede to that request.

8 MR. O'CALLAGHAN: Prior to the hearings,  
9 you will receive a letter telling you you may come to  
10 the Senate to review the transcript of your  
11 deposition and make note of any corrections for  
12 transcription on an errata sheet.

13 If you are called to testify at a public  
14 hearing, you will be permitted to have a copy of your  
15 deposition transcript four days in advance of your  
16 testimony. That's the general practice that was  
17 followed during the last round and we expect to be  
18 followed as well in the upcoming round of hearings.

19 You may be represented by counsel.

20 Are you represented by counsel today?

21 THE WITNESS: Yes.

22 MS. STERGIS: Barbara Stergis and Brad

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1 Buckles.

2 MR. O'CALLAGHAN: Objections to the form of  
3 questions will be noted for the record. Counsel may  
4 object on grounds of privilege or relevance. The  
5 committee chairman may rule on objections where the  
6 witness refuses to answer a question.

7 Please swear in the witness.

8 Whereupon,

9 ROBERT M. MC NAMARA, JR.  
10 was called as a witness and, having first been duly  
11 sworn, was examined and testified as follows:

12 EXAMINATION

13 BY MR. O'CALLAGHAN:

14 Q Please state and spell your last name for  
15 the record.

16 A Robert M. McNamara, Jr., M-c-N-a-m-a-r-a.

17 Q Are you aware of the committee's document  
18 request to the Department of the Treasury?

19 A Which one?

20 Q The numerous ones that were made in  
21 connection with this round of hearings.

22 A Yes.

1 Q Did you conduct a search for responsive  
2 documents, notes, reports or memoranda?

3 A I caused a search to be conducted, yes.

4 Q To your knowledge, have all responsive  
5 documents been produced?

6 A As far as I know, yes.

7 Q Are you aware of any documents that are in  
8 your possession, custody or control that are  
9 responsive to the request that have since been lost,  
10 destroyed or otherwise disposed of?

11 A I don't know the answer to that question.  
12 I'm not aware of any responsive documents that have  
13 been lost.

14 Q That were previously in existence that have  
15 since been lost or destroyed.

16 MS. STERGIS: Since the date of the  
17 request?

18 MR. O'CALLAGHAN: Yes.

19 THE WITNESS: I'm not aware of any. I  
20 don't know.

21 BY MR. O'CALLAGHAN:

22 Q You say you caused a search to be

1 conducted?

2 A Right.

3 Q How did you cause a search to be conducted?

4 A Actually, there were a number of searches  
5 of my office at different times in response to other  
6 requests for documents. One of those searches was  
7 conducted by inspectors of the Internal Revenue  
8 Service.

9 They conducted a search of my office and my  
10 files and files that were segregated as a result of  
11 the work last summer on the Whitewater matter.

12 Subsequent to that time, we got a committee  
13 request. I again searched my E-mails and asked most  
14 recently to have my secretary and my deputy have all  
15 of the attorneys and all of the secretaries search  
16 their E-mails, their own files, other computers.

17 Then I had one of my attorneys again go  
18 back and search through files that had been searched  
19 by the inspectors just to double-check.

20 Q Did you speak with anyone other than  
21 counsel prior to this deposition?

22 MS. STERGIS: On what subject?

1 BY MR. O'CALLAGHAN:

2 Q With regard to the deposition.

3 A At what time? What is the time frame?

4 Q Since you were first notified that you were  
5 going to be deposed.

6 A I knew that we were going to probably be  
7 deposed before we were notified, so yes, we did talk  
8 about it.

9 Q Who did you speak with?

10 A Other than counsel, it was probably --  
11 there are other lawyers who are working on this with  
12 Mr. Buckles and Ms. Stergis -- Mr. Schmalzbach,  
13 Ms. Kerner, Mr. McHale, primarily about the fact that  
14 there were going to be hearings because of Resolution  
15 120 and we would probably be called to give  
16 depositions and provide information.

17 Q How about specifically after you received  
18 particular notice that you were going to be asked to  
19 testify?

20 A Not on any of the substance. We talked  
21 about how did it go, how long did it go.

22 Q Referring to other depositions?

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10

1 A Yes, but nothing -- did not ask them  
2 substantively what they had provided to the  
3 committee.

4 Q Did you have any discussions with anyone  
5 with regard to refreshing your recollection in  
6 preparation for the deposition?

7 A Yes.

8 Q Who did you speak to?

9 A Ms. Stergis.

10 Q Anyone else?

11 A No. I don't recall. And Mr. Buckles this  
12 morning, the attorneys that have been assigned to  
13 assist us.

14 Q Any conversations with Mr. Knight?

15 A About refreshing my recollection? I have  
16 had conversations with him about the upcoming  
17 hearings, but I don't recall getting into any  
18 specifics about refreshing my recollection. I just  
19 don't recall specifics.

20 Q In preparation for the deposition,  
21 reviewing the events that occurred in the summer of  
22 '94.

1 A I just found out yesterday morning I was  
2 going to be deposed today. I didn't start  
3 preparation until yesterday, actually looking at  
4 documents. I had access to documents that I had  
5 turned over over the weekend that I reviewed at  
6 home. But no, I didn't talk to him since that time.

7  
8  
9 Q Your present business address?

10 A 1500 Pennsylvania Avenue, Northwest.

11 Q Who are you presently employed by?

12 A The United States Treasury Department.

13 Q And your present position?

14 A Assistant General Counsel for Enforcement.

15 Q Could you give me a brief summary of your  
16 employment history since you graduated from college.

17 A I have two college degrees. My last one  
18 was from John Carol in Cleveland, and I then went to  
19 the Peace Corps for two years and was a Peace Corps  
20 volunteer in Micronesia. I then came back and went  
21 to law school.

22 Do you want what I did in law school?

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12

1 Q No, since law school.

2 A I have been Assistant Majority counsel of  
3 the Senate Watergate Committee. I clerked on the  
4 Sixth Circuit U.S. Court of Appeals for Judge George  
5 Edwards. I was an Assistant United States Attorney  
6 here in D.C. for three years.

7 I was the counsel to Senator Edward Kennedy  
8 on the Judiciary Committee for three years. I then  
9 set up the first General Counsel's Office of the  
10 Peace Corps after it became autonomous and became its  
11 first general counsel.

12 I then spent eight years at the Treasury  
13 Department first as assistant director and then as  
14 Deputy Director for Enforcement, and for the last  
15 roughly six years, I have been the Assistant General  
16 Counsel for Enforcement.

17 Q Last six years?

18 A Since September '89. I am also an adjunct  
19 professor of law at Georgetown and I have been that  
20 for 10 years.

21 Q Could you describe how -- you are Assistant  
22 General Counsel for Enforcement at Treasury;



1 correct?

2 A Yes.

3 Q Is there an Office of Enforcement or  
4 Division of Enforcement?

5 A The General Counsel's Office includes every  
6 single attorney that works in the place, as you know,  
7 about 2200 lawyers. They are structured parallel  
8 with, a mirror image of the way the Treasury  
9 Department is structured, so that the lawyers always  
10 report to lawyers and are hired by lawyers and their  
11 performance is reviewed and they are rewarded and  
12 disciplined by lawyers all the way up to the general  
13 counsel.

14 I am one of the statutory assistant general  
15 counsels. I supervise about 170 to 180 lawyers and  
16 their support staffs who are the lawyers for the  
17 enforcement bureaus at Treasury. That includes  
18 Secret Service, Customs Service, Bureau of Alcohol,  
19 Tobacco and Firearms, the Financial Crimes  
20 Enforcement Network, Federal Law Enforcement Training  
21 Center, Treasury Executive Office of Asset  
22 Forfeiture.

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14

1 And then I have a staff of about a half a  
2 dozen senior lawyers, and we serve as lawyers to the  
3 Undersecretary for Enforcement and his staff,  
4 including the Deputy Assistant Secretaries as well as  
5 the Deputy Secretary on issues relating to law  
6 enforcement, which is broadly defined.

7 Q Who do you directly report to?

8 A Neal Wolin. He is now the Deputy General  
9 Counsel.

10 Q Who does he report to?

11 A To Edward Knight.

12 Q What is his position?

13 A He is the general counsel.

14 Q Who does Mr. Knight report to?

15 A The Secretary of the Treasury.

16 There may be an intermediate stop there. I  
17 know he has a reporting relationship with the Deputy  
18 Secretary, but I think he primarily reports to the  
19 Secretary.

20 Q During the period of March through August  
21 '94, 1994, who was your direct supervisor?

22 A Dennis Foreman. He was then the Deputy

1 General Counsel.

2 Q Who did he report to?

3 A He reported to Jean Hanson, who was the  
4 general counsel.

5 Q She reported to the Secretary?

6 A Reporting to the Secretary through the  
7 Deputy Secretary. I don't know how precise you want  
8 to be.

9 Q Who was the Deputy Secretary at the time?

10 A Roger Altman.

11 Q What was Mr. Knight's position at that  
12 time?

13 A He was Executive Secretary and I believe  
14 also had a title of counselor to the Secretary. I'm  
15 not sure about the latter title. He served in that  
16 capacity.

17 Q You say there are about a half a dozen  
18 attorneys who reported directly to you; is that  
19 right?

20 A Yes.

21 Q What are their names? Actually, let me put  
22 it in time reference. During the period March

1 through August '94.

2 A James Alliston, A-l-l-i-s-t-o-n. Debra,  
3 D-e-b-r-a, Diener, D-i-e-n-e-r. At that time,  
4 Mr. Alliston was my deputy. Currently Ms. Diener is  
5 the acting deputy, assistant general counsel. Linda  
6 Noonan, N-o-o-n-a-n. Adele Seigmund,  
7 S-e-i-g-m-u-n-d. David Hamil, H-a-m-i-l.

8 For a period of time, Ken Thompson was one  
9 of my lawyers and then he left to go to the U.S.  
10 Attorney's Office in Brooklyn. For some reason, I  
11 think I am missing somebody. I think that's it.

12 Q During March through August of 1994, did --  
13 is it the Office of Enforcement or the division?

14 A There is the Office of Enforcement, which  
15 is the Office of the Undersecretary. Is that what  
16 you are referring to?

17 Q The office for which you are assistant  
18 general counsel.

19 A There is an Office of the Assistant General  
20 Counsel for Enforcement. There is an Office of the  
21 Undersecretary for Enforcement.

22 Q Those are two different offices?

1 A One is the legal office. The other is the  
2 policy office. The Undersecretary is a presidential  
3 appointee and he is responsible for all of the  
4 operational and supervisory aspects of law  
5 enforcement in the Treasury Department. He  
6 supervises the same bureaus that my lawyers are  
7 lawyers for.

8 Q But his office is a policy office?

9 A A policy and sort of quasioperational  
10 office. He would supervise the fiscal and  
11 operational and other aspects.

12 Q Who is the Deputy Secretary for that in  
13 March-August 1994?

14 A Roger Altman. Deputy Secretary or the  
15 Undersecretary?

16 Q Undersecretary.

17 A Ronald K. Noble, N-o-b-l-e.

18 Q During the period March through August  
19 1994, did your office have any specific interaction  
20 with the Office of the Executive Secretary?

21 A Yes.

22 Q What was the nature of the interaction?

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1 A Part of it was just routine. The Executive  
2 Secretary is sort of the gateway to all of the  
3 documents coming into the Secretary, whether it is  
4 Congressional or outside or White House, anything  
5 that was going to the Secretary. Could be action  
6 memos from the staff went through that office.  
7 Nothing got to the Secretary except in that case.

8 They also had a role as I understand in  
9 scheduling meetings with the Secretary or at least  
10 advising on it although they weren't the scheduling  
11 office. So routinely, we would get at least if not  
12 directly, at least indirectly, tasks from the  
13 Executive Secretary to respond to letters or prepare  
14 responses to letters or provide information or any  
15 number of things depending on what the Secretary  
16 needed.

17 In some instances, materials coming over  
18 from the NSC went over there, and my office handled  
19 intelligence at that time, still does, as a legal  
20 support for the Office of Intelligence. And tasks  
21 that would go from the Executive Secretary to the  
22 Undersecretary for Enforcement oftentimes would come

1 through my office as well in order to assist in  
2 preparation.

3 In addition, as of March 4, the Executive  
4 Secretary was given the responsibility to respond to  
5 the subpoena that had been issued by the Independent  
6 Counsel, and we worked very closely. I particularly  
7 worked very closely with him on that and then  
8 throughout the summer.

9 Q Did your office have any role in assisting  
10 the Treasury office of Inspector General in  
11 conducting investigation into the White  
12 House-Treasury contacts during that time period?

13 A During the March time period? They  
14 didn't --

15 Q March through August '94.

16 A I'm not sure I understand. Did we have a  
17 role in the investigation?

18 Q Did you lend any assistance?

19 A Other than advice if it was asked for,  
20 provide information. But no, no specific  
21 assistance. We didn't provide investigative  
22 assistance, if that's what you mean. I'm not really

---

20

1 clear as to what "assistance" means.

2 Q Like if you were solicited for advice, what  
3 type of advice were you asked to give and when was it  
4 asked for and given?

5 A I don't recall any specific request for  
6 specific advice. I know that we were available to  
7 provide that kind of assistance or provide  
8 information, which we did, in terms of what was  
9 happening on the Hill, timing of various hearings and  
10 witnesses and information that we had picked up, we  
11 passed information to them that was thought to be  
12 important for them that we gleaned during that period  
13 of time. But we didn't do anything for a long period  
14 of time until actually June, the latter part of  
15 June.

16 So for three months, I didn't interact with  
17 them that much at all. We knew that the Inspector  
18 General was going to provide investigative resources  
19 to the Office of Government Ethics, and to the extent  
20 they needed assistance, we would be able to provide  
21 it. But there wasn't anything specific I can recall  
22 during that period of time.

1 Q After June, when the Inspector General's  
2 office actually initiated investigation on the White  
3 House-Treasury contacts, what type of informational  
4 services or advice did you provide to the IG's  
5 office?

6 A Making sure whether or not they needed it.  
7 In one instance, we wanted to make sure there were  
8 sufficient funds once they decided they were going to  
9 take depositions; for instance, rather than just  
10 standard memoranda of interviews, we wanted to make  
11 sure they had sufficient funds.

12 I remember talking to Francine Kerner, who  
13 was the counsel to the Inspector General at that  
14 time, checking to see whether or not they had  
15 sufficient money and if they hadn't, we would have  
16 figured out some way of making sure that they had  
17 it. I recall that they said they had a sufficient  
18 budget. That was an example of the kind of thing we  
19 did.

20 If I picked up information as a result of  
21 questioned areas that were coming up, I would pass on  
22 information to her to do whatever she felt was

22

1 important. If she felt it was important, she could  
2 act on it. Just to make sure she continued to get  
3 information to the extent there was. The whole  
4 process at this time was absolutely unique and we  
5 wanted to make sure everybody was operating from the  
6 same data point.

7 Q After June of '94, when were you first  
8 approached by the IG's office for assistance and for  
9 what assistance? What was requested?

10 A I don't now remember being specifically  
11 approached by Francine. I was never approached by  
12 the IG's office. I don't recall ever talking to  
13 anybody other than Francine Kerner.

14 Right now I don't have any specific  
15 recollection of any specific information that she  
16 needed or requested from us. I do know that we were  
17 in contact periodically.

18 Q How did the issue of the cost of the  
19 interviews come up? How were you involved in that?

20 A The question was what was the process they  
21 were going to use. This was not an IG  
22 investigation. This was an inquiry by the Office of



1 Government Ethics who did not have investigative  
2 resources to conduct the fact-finding.

3 The Secretary had asked the Inspector  
4 General both of Treasury and of the RTC to provide  
5 resources to the extent necessary or needed by OGE,  
6 and that's what they did. They didn't conduct, as I  
7 understand, their own independent investigation.

8 Q Referring to OGE; correct?

9 A I'm referring to the IG. The IG then  
10 conducted depositions, and it was unclear at the time  
11 as to how they were going to proceed. It was also  
12 unclear as to who was going to be present or not  
13 present, what the ground rules were going to be,  
14 because this really was sui generis. To the best of  
15 my knowledge, it had never happened before.

16 We didn't know what the ground rules were.  
17 We wanted to make sure we didn't have a misstep  
18 anywhere along the way. The easiest way to do that  
19 was to make sure everybody was in the loop and nobody  
20 had objections to the process being used.

21 The IG decided unilaterally that Treasury  
22 lawyers would not be present for Treasury witness

1 testimony, which was fine. But once they had decided  
2 that they were going to take depositions, somehow we  
3 became informed of it, and it was just a general  
4 question, since they don't normally take depositions,  
5 do you have enough money in your budget. They were  
6 just trying to run all the traps.

7 Q Was your office approached at any point by  
8 the Secretary's office as a possible office to run  
9 the inquiry for the OGE?

10 A You mean to actually do the depositions?

11 Q And conduct fact-finding.

12 A No.

13 Q With regard to -- you mentioned earlier  
14 that you wanted to make sure you were all working off  
15 the same database. What type of information  
16 gathering did your office provide to Francine Kerner  
17 or anyone at the IG's office beginning July 1st  
18 through the end of August?

19 A I think any information that we picked up  
20 either as a result of conversations with the lawyers  
21 at the White House or the lawyers on the House or  
22 Senate committees, I would pass on if I thought it

1 was something that she should know and it really was  
2 for her to deal with however she wanted. I don't  
3 have any specific recollection.

4 We were in constant contact with people up  
5 here on both sides of Congress, and we were doing  
6 document requests.

7 We were also dealing with the IG's request  
8 for documents, and there were some documents that  
9 were very sensitive and required sensitive handling  
10 and we tried to make sure that the same process was  
11 used with the Independent Counsel and the committees  
12 was being used by others.

13 Q Your office had a specific role with regard  
14 to the document requests?

15 A I essentially was the one who dealt as the  
16 point person for the Independent Counsel and the  
17 House and Senate Banking Committees with respect to  
18 the documents and ensuring that all the documents  
19 that were responsive to the outstanding requests or  
20 anything else that they needed, scheduling  
21 interviews, making sure people were available to the  
22 extent that we could provide the assistance, we were

1 serving the Secretary in that.

2 Q Did your office have a specific role in  
3 gathering documents for the joint IG investigation?

4 A It is not so much my office as it was me.

5 Q If you could just explain.

6 A Let me back up just a little bit. On March  
7 3rd when the Secretary became aware of the press  
8 releases that were coming out about the White House  
9 contacts, it has been reported and he has testified  
10 he then asked OGE to conduct an ethical investigation  
11 to determine whether there was a breach of some  
12 standard of conduct.

13 The next day in the afternoon, the  
14 department received a subpoena of the grand jury.  
15 Either that evening or the next morning, which was a  
16 Saturday, the 5th, I believe, Ed Knight, who was then  
17 the Executive Secretary, issued a standstill order  
18 essentially, requiring no documents be destroyed  
19 anywhere by any of the 179,000 people who work with  
20 the Treasury Department.

21 The following Monday when I came in, there  
22 were discussions about compliance with the subpoena

1 and how best to do it, and eventually I was put in  
2 charge of that.

3 Q Were you in charge of all document requests  
4 with regard to the White House-Treasury contacts  
5 issue?

6 A I was responsible for supervising the  
7 gathering of documents, identification and gathering  
8 of documents as a result of the Independent Counsel's  
9 grand jury subpoena, as broadly defined as those  
10 parameters were.

11 Q Was there anyone else at Treasury who was  
12 involved in this process that helped you coordinate?

13 MR. BUCKLES: Mr. O'Callaghan, I want to  
14 renew an objection that we have had in the past when  
15 we have got into this area on relevance.

16 I still don't understand, after allowing  
17 you a lot of time on the last deposition to go  
18 through it, how going through the documents and how  
19 going through some of the conversations going on  
20 within the Treasury Department has anything to do  
21 with whether the report issued by the Office of  
22 Government Ethics or the related transcripts were

1 improperly released to the White House or were used  
2 to communicate -- whether any or either of those two  
3 items were used to communicate information to the  
4 White House, and I would like to state for the record  
5 again that I believe all of this is irrelevant.

6 You gave me a foundation last time, and I  
7 think we were quite indulgent to allow that to go on  
8 for almost 10 hours in the last deposition, and very  
9 little of it ever focused or got back to the central  
10 point in the Senate resolution.

11 I understand why some of this is necessary  
12 to set the foundation so that you understand what the  
13 process was, but frankly, throughout the last  
14 deposition, nothing ever seemed to be done to try to  
15 draw this back into some sort of context or to use  
16 it.

17 So, I would like again for you to explain  
18 to me how the relevance of getting into all of these  
19 other matters of the document productions, of the  
20 other conversations going on between people within  
21 the Treasury Department has any relevance to whether  
22 the report of the OGE or the related transcripts were

1 improperly released to the White House or were used  
2 to communicate information to the White House.

3 MR. O'CALLAGHAN: Certainly. The line of  
4 inquiry which I am embarking on is meant to list the  
5 relationship between the different people who were  
6 involved with assisting the IG's office in running  
7 their investigation in connection with the OGE report  
8 and the transcripts that were produced during the  
9 course of that investigation and to get an idea of  
10 how the process worked and what the different  
11 relationships were with the different people in the  
12 Department of Treasury; for instance, as to the  
13 different people who had different roles in assisting  
14 that investigation who would have access to the  
15 different documents that are referred to in the  
16 resolution.

17 MS. STERGIS: Please articulate --

18 MR. BUCKLES: The resolution itself doesn't  
19 talk about documents. It talks about transcripts,  
20 number one.

21 MR. O'CALLAGHAN: Transcripts are  
22 documents.

---

30

1 MR. BUCKLES: I don't know how the  
2 investigation that was conducted within the Treasury  
3 Department, what the IG did and how any of those  
4 interrelationships and the buildup to those  
5 transcripts has anything to do with whether or not  
6 the transcripts themselves were improperly released  
7 or whether they were used to communicate information  
8 to the White House.

9 You are telling me you want to understand  
10 how the investigation was conducted. I don't know  
11 how the manner in which the investigation was  
12 conducted has anything to do with whether the report  
13 or the related transcripts were improperly  
14 disclosed.

15 MR. O'CALLAGHAN: I think I just described  
16 that to you. It is important to know the  
17 relationships with the different people within  
18 Treasury and Treasury IG's office with this witness.  
19 I also don't believe I need to give you all my  
20 reasons for my line of inquiry to give you a road map  
21 where my questioning is going.

22 MS. STERGIS: Please explain --

1 MR. O'CALLAGHAN: Please let me finish.  
2 Thank you very much.

3 The reason this is relevant is to establish  
4 who was involved in the process and who had access to  
5 this information and who eventually gave possession  
6 of the different documents that are referred in the  
7 resolution.

8 MR. BUCKLES: What documents are referred  
9 to? Transcripts.

10 MR. O'CALLAGHAN: Correct, and the  
11 information contained in the transcripts.

12 MR. BUCKLES: The transcripts didn't come  
13 into existence until some time in July. We have been  
14 quite indulgent. We will continue to do that. We  
15 don't want to obstruct what you are trying to do.

16 It seems we are being dragged through  
17 things that aren't covered by this. This is wasting  
18 a lot of time and energy of people who have a lot of  
19 other things to do to be dragged through something  
20 that on the surface does not address what is within  
21 the committee's charter here. I will allow you to  
22 proceed. We will not raise something we have to take

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32

1 to the chairman.

2 But I want you to know for the record that  
3 I just don't see how this, as we have sat through  
4 these, how they are building up to anything back on  
5 these transcripts. Having said that.

6 MR. O'CALLAGHAN: I appreciate your  
7 concerns. I will endeavor to expedite my line of  
8 questioning and to avoid drawing out any line of  
9 questioning which will be irrelevant. I would  
10 appreciate it if you feel that Majority counsel is  
11 straying from the line, please feel free to bring up  
12 the objection again and bring it to my attention.

13 MR. BUCKLES: Thank you.

14 MR. O'CALLAGHAN: Read back my last  
15 question.

16 (The reporter read the record as requested.)

17 THE WITNESS: During what period of time?

18 BY MR. O'CALLAGHAN:

19 Q What I was trying to get at was whether you  
20 actually did any document retrieval in connection  
21 with the IG's investigation.

22 MS. STERGIS: Objection; relevance.



1 THE WITNESS: The documents that we turned  
2 over to the IG were documents that had been prepared  
3 for -- identified and retrieved pursuant to the grand  
4 jury subpoena.

5 There was never a separate request. We had  
6 a continuing obligation under the subpoena to  
7 identify documents, and when we found those, but  
8 those documents as I recall weren't turned over to  
9 the IG until perhaps mid-June or so.

10 I don't have the exact date. I could get  
11 that for you. We didn't do a separate task on  
12 documents, if that's your question. We weren't asked  
13 to.

14 BY MR. O'CALLAGHAN:

15 Q Was a specific request made by the IG's  
16 office for documents that were produced pursuant to  
17 the Independent Counsel subpoena?

18 A Yes. I don't remember if it was written.  
19 I think it may have just been verbal. But we did  
20 turn over the documents to them.

21 Q During the time frame June through August  
22 of 1994, did you have any contacts with the White

1 House with regard to the issue of White  
2 House-Treasury contacts?

3 A My contacts with the White House during  
4 June and July, is it?

5 Q Correct.

6 A They primarily dealt with their requests  
7 for documents, sharing of information regarding  
8 timing and, early on in the process, questions of the  
9 what the procedure would be for the OGE inquiry. We  
10 did not talk about contacts, substantive information  
11 about White House-Treasury contacts.

12 Q With regard to the sharing of information  
13 regarding timing, what specifically were the  
14 substance of those discussions?

15 A I think there were general questions about  
16 when would people be called to testify, if we knew.  
17 You are talking into July. The committee indicated  
18 it was going to have hearings at a certain period of  
19 time.

20 MR. BUCKLES: I would like to raise an  
21 objection on this. I really don't want to get into  
22 something where we are talking about Treasury's

1 preparation for hearings or the White House  
2 preparation for hearings.

3 If you can ask him a question the other  
4 way, that phrases it the other way, did any of the  
5 contacts deal with the OGE report, did any of the  
6 contacts deal with the IG investigation or  
7 transcripts, that's fine. But I don't want to have a  
8 witness here being asked questions about what they  
9 did in working with the White House in preparing for  
10 Congressional hearings. That is just really unfair.

11 MR. O'CALLAGHAN: Mr. Buckles, I appreciate  
12 your objection. Again, I'm not going to have you  
13 conducting the deposition here. I asked a fair  
14 question. I was going to follow up with more  
15 specifics. I will not limit my questions in such a  
16 way that I will not elicit responses that I would  
17 otherwise not get.

18 MS. STERGIS: Let's go off the record a  
19 minute.

20 (Discussion off the record.)

21 MR. BUCKLES: I'm still not going to -- I'm  
22 going to instruct him not to answer questions about

1 what they were doing in preparing for hearings back  
2 in that time period. It is just not fair. It has  
3 nothing to do with this and how the executive branch  
4 people are talking to each other to prepare for House  
5 and Senate hearings is just not the appropriate  
6 subject of anything in here.

7 MR. O'CALLAGHAN: You can --

8 MR. BUCKLES: If you want to have him  
9 answer we talked about hearings and that's what they  
10 talked about, fine. When you start to get into the  
11 details, frankly, it is not fair and it is not  
12 covered by this.

13 MR. O'CALLAGHAN: You jumped in. I didn't  
14 ask any specific questions about what they were doing  
15 in preparation for the hearings, which could also be  
16 relevant with regard to whether the preparation  
17 involved used transcripts. What you are trying to do  
18 is shut off a line of inquiry before I have a chance  
19 to fully explore it.

20 MR. BUCKLES: Just be careful in this area  
21 of questioning, because I will cut you off again if  
22 it is eliciting answers that deal with what they were

1 doing in talking about hearings and witnesses at the  
2 hearings.

3 If you want to talk about the transcripts,  
4 that's fine. I have no objection to that  
5 whatsoever. If you are careful about how your  
6 questions are, it is all right. But if it starts  
7 delving into something I think is beyond this, it is  
8 not fair to anybody to have him answering those kinds  
9 of questions.

10 MR. O'CALLAGHAN: I wasn't given a chance  
11 to follow up on the first question which I asked how  
12 many contacts he had with the White House during this  
13 time period. You jumped in before he had a chance to  
14 respond to his answer. If I asked a question that  
15 was trying to elicit that kind of a response, I think  
16 your objection would be appropriate, but I think you  
17 should wait until my questions are asked. I think  
18 that is fair.

19 MR. BUCKLES: All right.

20 BY MR. O'CALLAGHAN:

21 Q I asked you what the nature or what the --  
22 I asked you whether you had contacts with the White

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1 House during June and July of 1994.

2 A Yes. White House counsel.

3 Q White House counsel, yes. Let me do it  
4 this way. I will endeavor to accommodate Mr. Buckles  
5 whenever I can.

6 During this time period, who in the White  
7 House counsel's office did you have contacts with?

8 A Primarily Jane Sherbourne and Sheila  
9 Cheston. I had one meeting with Lloyd Cutler and one  
10 or two meetings with Joel Klein on an issue that was  
11 not related to this.

12 Q Again, how many meetings would you say you  
13 had with Ms. Sherbourne in the time period?

14 A I don't think we had that many meetings.  
15 Most of our contacts with each other were by phone.  
16 This is the June to July period. There was a period  
17 of time in which they came over to look at Treasury  
18 documents and we went to the Old Executive Office  
19 Building to look at White House documents that had  
20 Treasury equities in them. I don't recall when that  
21 date was.

22 I used to see Ms. Sherbourne almost on a

1 weekly basis in a nonprofessional context. We go to  
2 the same church. But we never discussed work. We  
3 discussed children.

4 Q How frequent were your contacts with  
5 Ms. Cheston?

6 A It would vary. Sometimes it would be two  
7 or three times a day, a phone call to either get  
8 information or answer questions or provide what we  
9 knew. Sometimes not at all during the day. I  
10 couldn't begin to estimate the number now.

11 Q You said you had about one meeting with  
12 Mr. Cutler?

13 A Yes.

14 Q When did that occur?

15 A July 6.

16 Q What was the purpose for that meeting?

17 MR. BUCKLES: Could we go off the record  
18 for just a second. I think it will facilitate moving  
19 on and I don't have to keep objecting if I could have  
20 a moment with the witness.

21 MR. O'CALLAGHAN: Sure.

22 (Counsel conferred with the witness.)

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1 THE WITNESS: Could you read the question  
2 back.

3 (The reporter read the record as requested.)

4 THE WITNESS: To discuss Congressional  
5 strategy.

6 BY MR. O'CALLAGHAN:

7 Q Were there any discussions during that  
8 meeting with regard to White House counsel's office  
9 having access to transcripts from the IG's  
10 investigation?

11 A I don't recall precisely there being that  
12 discussion. I know at the time they had just  
13 started, the depositions had just started. But I  
14 don't recall that being a topic of the conversation.

15 Q During the period March through August '94,  
16 did you have any conversations with Mr. Cutler with  
17 regard to his office receiving access to transcripts  
18 that were either produced or were going to be  
19 prospectively produced by the IG's office?

20 A You are saying March through August now  
21 rather than June and July?

22 Q Yes, March through August.

1 A We had conversations once it was determined  
2 that they were in fact going to take depositions and  
3 have transcripts available at some point.

4 Q When you say "they," you are referring to  
5 the IG's office?

6 A The two IGs were going to be doing that,  
7 and they were going to be provided to the Office of  
8 Government Ethics. But those conversations would  
9 have been early July, I believe. I don't even think  
10 we knew at the end of June what the process was going  
11 to be. But give or take a few days there. I don't  
12 know precisely when it was. But I do know that we  
13 had conversations.

14 Q During those conversations, did Mr. Cutler  
15 or anyone in his office make a request to receive  
16 copies of the transcripts?

17 A I spoke to Mr. Cutler to the best of my  
18 knowledge once, and that was on the 6th. I do not  
19 recall him -- at this time, I do not recall him  
20 actually making that request. I do know that I had  
21 conversations with both Sheila Cheston, Jane  
22 Sherbourne at different times with respect to whether

1 we would get copies of them and if so, when. But I'm  
2 not sure anybody knew.

3 Mr. Cutler was conducting an investigation  
4 at the request of the President and it was clear to  
5 us, at least clear to me, by his counsel that he  
6 needed this information in order to conduct a  
7 complete investigation.

8 Q Do you recall a time in July when anyone  
9 from the White House counsel's office made a request  
10 to you with regard to whether they could receive  
11 copies of transcripts from the IG's offices?

12 A No one asked me for copies of the  
13 transcripts.

14 Q Are you aware of any requests made to the  
15 White House counsel's office to anyone at Treasury in  
16 July for copies of the transcripts?

17 A I know that requests were made, because we  
18 discussed them. But I'm not sure how you mean being  
19 made. It wasn't made formally that I recall.

20 I do know that yesterday I saw a document  
21 that indicated that I had submitted a response to a  
22 question that indicated Mr. Cutler had asked the



1 Secretary on July 5th. But I don't have any present  
2 recollection of that, of the facts surrounding that.

3 Q Do you recall writing a letter?

4 A I do recall writing a letter, yes.

5 Q I would like to show you exhibit -- the  
6 document Bates stamped 10955. Let your counsel take  
7 a look at it. Please let me know when you have had a  
8 chance to review it.

9 (Witness examined the document.)

10 MR. O'CALLAGHAN: For the record, during  
11 the copying process, a couple letters from the  
12 left-hand margin were inadvertently chopped off. I'm  
13 not sure whether that occurred with the committee or  
14 beforehand.

15 MS. STERGIS: I --

16 THE WITNESS: Do you have the signed letter  
17 I sent to Mr. Codinha?

18 MR. O'CALLAGHAN: I don't believe I have a  
19 copy of it.

20 MS. STERGIS: I believe it is in the  
21 production. We can get you the Bates number when we  
22 have the opportunity to.

1 BY MR. O'CALLAGHAN:

2 Q For now, why don't we just refer to this  
3 one.

4 A Okay.

5 Q Have you seen this document before?

6 A Yes.

7 Q After looking at the document, does it help  
8 refresh your recollection?

9 A No. I saw this yesterday for the first  
10 time since October of last year, and I recall  
11 responding to Mr. Codinha. I think that the actual  
12 date of the letter is September 26, '94, but I don't  
13 know what the basis of the statement is at this point  
14 in time. I don't know what I relied on for providing  
15 that information to him.

16 Q Do you recall if you consulted with anyone  
17 before writing this letter?

18 A I recall consulting with people after I had  
19 written the letter in a draft form. I believe I  
20 showed it to Mr. Schmalzbach. I may have shown it to  
21 Mr. McHale, which is routine practice at the time. I  
22 do not recall showing it to Mr. Knight, although I

1 may have. I don't know who else would have been on  
2 the clearance process at that time. There could have  
3 been others.

4 My recollection of showing it to  
5 Mr. Schmalzbach is very vague. It is not definite.

6 Q Did your office ever come into possession  
7 of copies of the transcripts?

8 A Yes.

9 Q When did your office come in possession of  
10 the transcripts?

11 A It would have been sometime on or about  
12 July 18th or 19th. I suspect it was later than that,  
13 but I'm not sure.

14 Q Who provided your office with the copies of  
15 the transcripts?

16 MR. PORTNOY: When you say "your office,"  
17 do you mean the General Counsel's Office or  
18 Mr. McNamara or who?

19 BY MR. O'CALLAGHAN:

20 Q Your office of Assistant General Counsel  
21 for Enforcement.

22 A I was the only one in my office actually

1 working on this. So it wasn't my office. Actually,  
2 we had segregated out my work from the rest of the  
3 office. On occasion, I had one attorney if there  
4 were legal issues that had to be done on a very  
5 discreet basis or document production. But I was the  
6 one who was getting the information.

7 I --

8 Q Was it literally your office where you got  
9 the transcripts?

10 A I'm sorry?

11 Q It was literally your office that received  
12 the transcripts physically, where you worked?

13 A I personally received a copy from I believe  
14 Mr. Schmalzbach's office. I don't believe it was  
15 from Mr. Schmalzbach. I did not get them directly  
16 from the Inspector General, to the best of my  
17 knowledge, or the Office of Government Ethics.

18 Q Had you requested a copy of the  
19 transcripts?

20 A Had I?

21 Q Correct.

22 A No.

1 Q Do you know why you were provided with  
2 copies of the transcripts?

3 A Because I was one of the lead attorneys  
4 assisting the Secretary and the department in  
5 preparing for the hearings.

6 Q So they were provided to you for purposes  
7 of preparing for testimony for the Secretary?

8 A They were provided by the Inspector  
9 General's office to us for whatever reason that we  
10 might need them. I don't know exactly what the  
11 motivation was of the IG.

12 Q Were you ever told?

13 A Was I ever told what?

14 Q Why you were provided with the transcripts  
15 specifically by anyone.

16 A So that we could prepare for the hearings.  
17 That was at least the assumption.

18 Q Where did you keep the transcripts after  
19 you received them?

20 A In my office. I had a separate office that  
21 was solely used for this purpose, for preparing the  
22 Secretary and handling document production. It was

1 not my official office.

2 Q Where was that located?

3 A It was located in the suite of offices that  
4 I had. It really was at that time Adele Seigmund was  
5 on maternity leave, and I had taken her office over.

6 Q Did anyone else have access to the  
7 transcripts when they were stored there?

8 A Anybody could have walked in. Nobody did.  
9 But they could have walked in. The room was kept  
10 locked when I wasn't there.

11 Q Did you provide copies of the transcripts  
12 to anyone?

13 A No.

14 Q Did anyone else provide copies of the  
15 transcripts that you had that were delivered to you  
16 to anyone?

17 MS. STERGIS: I'm sorry. I didn't hear the  
18 question.

19 BY MR. O'CALLAGHAN:

20 Q I asked if you specifically provided  
21 copies. Did anyone else provide copies that you had  
22 to anyone else?

1 A Well, at some point the department provided  
2 copies to the White House counsel's office.

3 Mr. McHale forwarded a copy of them to Jane  
4 Sherbourne. At a subsequent period -- go ahead.

5 Q The copies that Mr. McHale provided,  
6 though, they weren't your copies, though, were they?

7 A No.

8 Q They were copies in his possession?

9 A I guess so. As far as I know, we had a  
10 number of copies. I don't know how many copies we  
11 got.

12 Q I guess the question I had was a pretty  
13 specific question, whether the specific copies you  
14 had were provided --

15 A No. Mine were still back in my office. Or  
16 at least they were. I don't know if they were picked  
17 up as part of the production or not. But they had  
18 been in my office and were never moved.

19 Q When did Mr. McHale provide the White House  
20 with copies of the transcripts?

21 A When?

22 Q Yes.

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1 A Do you have a letter?

2 Q Yes, I can give you a document to look at.  
3 The document is Bates stamped 6877.

4 A July 23, 1994.

5 Q You can say that after referring to the  
6 document?

7 A Yes. I recognize the document and the  
8 signature.

9 Can I clarify something? I think I may  
10 have said I never spoke to Ms. Sherbourne at church  
11 about work. I think we did commiserate about it, but  
12 we never did discuss the substance of what we were  
13 doing. I wanted to clarify that.

14 Q Were any of those discussions with regard  
15 to White House transcripts or the OGE report?

16 A I don't recall them being anything specific  
17 like that. I think it was more just the hours we  
18 were putting in and the time away from our families  
19 and it will be over soon, that kind of thing. But I  
20 didn't want to mislead you.

21 Q Understandable commiseration.

22 A Well, we were rarely seeing our families.

1 It was a tough time.

2 Q I would like to take you back. You said  
3 earlier you thought you received transcripts around  
4 July 18th or 19th.

5 A That was the time I recall, yes. It was  
6 about that period of time. I didn't get them  
7 directly from the Inspector General. I got them and  
8 they were in my office and I just stacked them. I  
9 had everything else to do and this was not my issue I  
10 had to deal with at the time.

11 Q Were you involved in helping to prepare a  
12 chronology at any time with regard to the  
13 transcripts?

14 A No. I remember seeing the chronology, if  
15 that's what you are saying, but I didn't prepare a  
16 chronology.

17 Q When did you see the chronology?

18 A There was a period of time where the IG  
19 provided us a draft of the chronology, "us" meaning  
20 the department. I don't know if it was at the same  
21 time that they gave it to the Office of Government  
22 Ethics or not. I just don't have a clear

1 recollection of that.

2 But we had attorneys comparing that  
3 chronology with the transcripts and providing  
4 editorial comments to the extent that they were  
5 either correct or not correct or whatever and it was  
6 sent back to the IG for whatever purpose he wanted.  
7 It really was to sort of flyspeck the thing, just  
8 another pair of fresh eyes.

9 Q What attorneys were involved with the  
10 flyspecking?

11 A I think it was David Dougherty,  
12 D-o-u-g-h-e-r-t-y, Peter Rittling, R-i-t-t-l-i-n-g,  
13 Steve McHale.

14 I don't recall if there was another  
15 attorney, but all of those worked for Ken  
16 Schmalzbach. Steve, of course, was Ken's deputy.

17 Q Do you recall if the first time you saw a  
18 draft chronology was before or after July 22nd or on  
19 July 22nd?

20 A I for some reason think it was later than  
21 that. I don't know. I could be wrong. I just don't  
22 recall the exact date.



1 Q Please let me know if I asked this  
2 question.

3 During the period March through August of  
4 1994, how many contacts did you have with Francine  
5 Kerner?

6 A I don't know. I couldn't begin to guess.  
7 Francine was one of our senior attorneys. At that  
8 time she was counsel to the IG. I just have no  
9 idea.

10 Q Maybe I can be more specific. During the  
11 time period, how many contacts did you have with  
12 regard to the White House-Treasury contacts issue?

13 A The only contacts I would have had with her  
14 would have been in the context of the Secretary's  
15 request of OGE and the production of copies of  
16 documents that we had given to the Independent  
17 Counsel.

18 She and I -- I worked with her because  
19 there were some documents that needed special  
20 handling because of their sensitivity. There were  
21 other documents that questions of privilege had been  
22 raised about and I wanted her to be aware of those.

1 There were times when -- I recall one  
2 instance, they were trying to arrange an interview or  
3 a deposition of I believe it was Jack DeVore, I think  
4 it was him, and they asked for some assistance to see  
5 if we could figure out a time that was convenient. I  
6 just have a vague recollection of that.

7 So, it would have been episodic, at best.

8 Q Who is Jack DeVore?

9 A Jack DeVore at the time was the Assistant  
10 Secretary for Public Affairs. At some point he  
11 left. In this period of time he left. I think it  
12 was closer to June, May or June, but I could be  
13 wrong.

14 Q He left the agency?

15 A Left the agency. He resigned, retired and  
16 went back to Texas. I'm trying to think -- I can't  
17 think of anything else specifically that we dealt  
18 with. It was just, again, oftentimes on a general  
19 basis.

20 Q Did your office specifically help schedule  
21 the interviews for the IGs?

22 A Not specifically, no. In the case -- I

1 remember with DeVore. I don't remember it with the  
2 others, but I remember it with DeVore. They were  
3 just having a problem. I don't know what the problem  
4 was.

5 I think they wanted him to come to  
6 Washington, rather than for them to go out to  
7 Dallas. But I don't want to be held to that. I just  
8 don't have a clear recollection of what the  
9 difficulty was.

10 I called his attorney to see if there  
11 wasn't some way we could expedite it because of the  
12 tight time frame that Congress had put us under in  
13 order to get the work done and then prepare for the  
14 hearings.

15 Q So, you were helping to keep the  
16 investigation rolling in a timely manner?

17 A If we could, yes. This was what the  
18 Secretary asked OGE to do and IG. If there was  
19 anything we could do to facilitate that, given the  
20 fact that he was going to be testifying very quickly  
21 or very soon after that period of time, that we  
22 needed to provide anything we could do to help.

1 Q Did you have any role in helping to provide  
2 questions for the IG interviews?

3 A No.

4 Q Do you know or have you ever learned when  
5 the office of general -- let me know if I have this  
6 right, too. Is it the office of general  
7 administrative and general law?

8 A You are talking about Mr. Schmalzbach's  
9 office?

10 Q Correct.

11 A It now is known as a different name. It  
12 was at the time the Office of the Assistant General  
13 Counsel for Administrative and General Law.

14 Q I had an extra "general" in there.

15 A It is now called the Office of General Law  
16 and Ethics.

17 Q Do you know, have you ever learned when  
18 they first received copies of transcripts from the IG  
19 interviews?

20 A It was either the 18th or the 19th, I  
21 recall. That's my recollection, sometime around that  
22 period of time.

1 Q How did you come to know that they had  
2 received the transcripts?

3 A We were in contact daily. We worked --  
4 that's almost all we did, Ken and Steve and I, from  
5 the morning until night and prepare for these  
6 hearings and provide whatever assistance we could.

7 Q Did Mr. Schmalzbach ever tell you that he  
8 had received the transcripts between July 8th and  
9 July 13th?

10 A I'm sorry. Ask me that again.

11 Q Did Mr. Schmalzbach or anyone in his office  
12 ever tell you -- just for the record, I changed the  
13 question a little bit, too.

14 Did Mr. Schmalzbach or anyone in his office  
15 tell you that his office had received copies of the  
16 transcripts between July 8th and July 13th?

17 A No.

18 Q Had you ever heard that before?

19 A No. This is the first time I have heard  
20 that.

21 Q Had you ever heard that he was asked to  
22 return the transcripts on July 13th back to the IG's

1 office?

2 A I don't have any recollection of that.  
3 Could you tell me the time period again. It was July  
4 8th?

5 Q To July 13th, 1994.

6 A I don't have any recollection of having  
7 ever heard that. Do you have something to refresh my  
8 memory?

9 Q Actually, I don't know if this will help  
10 refresh your memory, but there is a notation to it,  
11 this document Bates stamped 016018. Take a moment to  
12 review it and then I will ask you if you have seen it  
13 before and if you recognize anything on the document  
14 and we will proceed from there.

15 (Witness examined the document.)

16 A This doesn't refresh my recollection at  
17 all.

18 Q It is a copy out of a spiral notebook with  
19 handwritten notes on it with FK on top and a date  
20 7/13. Do you recognize the handwriting on this  
21 document?

22 A It is Ken Schmalzbach's handwriting.

1 Q Have you ever seen these notes before?

2 A I saw notes similar to these. I don't  
3 recall this one specifically yesterday as I was  
4 preparing myself to come and testify, but I don't  
5 recall seeing that phrase. I may have, but it didn't  
6 strike me.

7 Q Was your office kept up to date on the IG  
8 investigation as it was being conducted?

9 MS. STERGIS: Objection. I think  
10 Mr. Moscato has testified that only he in his office  
11 worked on these matters.

12 BY MR. O'CALLAGHAN:

13 Q Were you?

14 A Only to the extent of the scheduling of  
15 interviews. They would tell us who was coming up, if  
16 it were Treasury witnesses who were not represented  
17 by counsel, for instance, or where they were in the  
18 process, how many more they had to do so that we  
19 could figure out what the timing was going to be.

20 We were up against a pretty severe deadline  
21 in terms of when the Congressional hearings were  
22 going to start. We really needed to make sure if

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1 there was anything that was causing a delay, to the  
2 extent we could do something to facilitate getting it  
3 moving, that we did. Beyond that, nothing of  
4 substance was discussed about the interviews.

5 Q Were you ever provided summaries of the  
6 transcripts or of the interviews prior to the 18th or  
7 19th?

8 A No. I don't recall ever receiving a  
9 summary.

10 Q Oral or written, either way.

11 A Of the substance of the depositions?

12 Q Correct.

13 A I don't recall that.

14 Q I would like to show you a document which  
15 you were shown earlier Bates stamped 6877, which is a  
16 July 23, 1994 letter on Department of Treasury  
17 stationery. It says "by hand." It is addressed to  
18 Jane Sherbourne, Esquire, and it is signed by Steve  
19 McHale.

20 You said before you had seen this document?

21 A Yes.

22 Q When did you first see it?

1       A    I saw it in draft form. It would be at  
2   least a day or so before the July 23rd date that is  
3   here.

4       Q    The July 23rd date?

5       A    The document 6877 is dated July 23, 1994,  
6   which is the date that it says it was delivered by  
7   hand. It was delivered by hand that date to  
8   Ms. Sherbourne.

9       Q    How did it come to your attention?

10      A    How did this document here come to my  
11   attention?

12      Q    In draft form, yes.

13      A    We had been discussing the issue for some  
14   time with Mr. Knight and Mr. Schmalzbach, myself,  
15   Mr. McHale with respect to the sharing of these  
16   transcripts in the White House counsel's office.

17      Q    To your knowledge, when was the first draft  
18   of this letter created?

19      A    It was a day or so perhaps before it was  
20   sent. I don't recall exactly.

21      Q    Who created the first draft?

22      A    I believe Mr. McHale did.

1       Q    At this point, had a request been made by  
2   White House counsel's office for the transcripts?

3       A    There was sort of a standing request. We  
4   knew the White House counsel wanted it. They wanted  
5   it to prepare for Congress in the hearings he was  
6   about to participate in as well as to conduct his own  
7   investigation. We had discussed it a number of times  
8   as to whether or not there was any reason, any legal  
9   reason not to give it to him. This was before the  
10   letter had been written. But it was something that  
11   we were very aware of. It was on the front burner.

12      Q    Had the White House counsel ever been given  
13   a date when they would be able to receive the  
14   transcripts?

15      A    Not by me.

16      Q    By Mr. Schmalzbach or anyone in his office?

17      A    I don't know.

18      Q    How about by Mr. Knight?

19      A    I don't know.

20      Q    Was there a specific event or concern that  
21   served as a catalyst for the writing of the draft of  
22   this letter?



1 A Well, we had gotten the transcripts either  
2 the 18th or the 19th. There may have been another  
3 request from the White House, a formal request. I  
4 don't recall. I know that in the letter that I sent  
5 to Mr. Codinha that we indicated at least some time  
6 in late July, I believe is the language in the  
7 letter. If you have it, I can refer to it.

8 Q Okay. It is Bates 10955.

9 A You don't have the original letter that I  
10 sent? I could further rely on that.

11 MR. O'CALLAGHAN: I can go upstairs and get  
12 a copy of it. It is probably a good time for a break  
13 anyway.

14 THE WITNESS: Let me finish the answer.

15 In this draft, it says "renewed later in  
16 July." I have a vague recollection sometime before  
17 this that renewal was made. I heard about it. It  
18 was the impetus for making the final decision and  
19 determining there were no legal impediments. This  
20 was appropriate and proper and in fact necessary.

21 Steve was, I believe, tasked by Ed Knight  
22 to prepare the transmittal document.

1 BY MR. O'CALLAGHAN:

2 Q The request you are referring to, this  
3 letter is -- the request in later July, this letter  
4 is a direct response to that request?

5 A I believe so. I don't know that for a  
6 fact. I know there was a second request sometime  
7 later in July and had heard that there was. I didn't  
8 receive it personally.

9 Q Did you ever learn who that request was  
10 made by, to whom they made it?

11 A I think in the letter I say it was made by  
12 Cutler to the Secretary.

13 Q In the later draft of the letter, in this  
14 particular draft, I will show it to you. Again,  
15 referring to 109 --

16 MS. STERGIS: Objection. Why don't we get  
17 the signed copy.

18 MR. O'CALLAGHAN: Sure. I have no problem  
19 with that.

20 (Witness examined the document.)

21 THE WITNESS: The statement is "Cutler  
22 asked for copies of transcripts of interviews." It

1 doesn't say he asked the Secretary. He asked for  
2 "copies of transcripts of interviews taken by the  
3 Inspector General." That's what I was referring to.

4 MR. O'CALLAGHAN: Why don't we take a break  
5 here.

6 (Recess.)

7 BY MR. O'CALLAGHAN:

8 Q I show you and your counsel a document  
9 Bates stamped 13737.

10 A I don't know if the draft is different.  
11 For the record, the second item is a question by  
12 Senator Shelby contained on page 71 of the transcript  
13 regarding the date on which former White House  
14 counsel Lloyd Cutler asked for copies of the  
15 transcripts of interviews taken by the Treasury  
16 Inspector General.

17 The answer to this question is as follows:  
18 "Mr. Cutler's request was first made on July 5, 1994  
19 and renewed late in July."

20 Q I guess the outstanding question was  
21 whether you knew who Mr. Cutler made the request to.

22 A I don't.

1 Q Either one of the requests?

2 A No. I don't have any current recollection  
3 of that. It has been over a year.

4 Q Were you ever told at any point?

5 A I knew that the White House wanted copies  
6 of the transcripts. But Mr. Cutler himself making a  
7 request to whom, I don't at this time know who he  
8 made the request.

9 But I was having conversations with his  
10 counsel, because they were concerned about not having  
11 them -- about having them so Cutler could finish his  
12 investigation and prepare for his testimony. That's  
13 as much as I can give you.

14 I'm not trying to parse out words here. I  
15 am only trying to differentiate between two things.

16 Q You were speaking with his counsel to  
17 express his desire to use the transcripts?

18 A I spoke to Cutler only once in July. I  
19 don't recall if this issue came up then. I didn't  
20 speak to him again. I only spoke to his counsel.

21 Q Did his counsel ever make a request to you?

22 A They never made a formal request, can I,

1 Jane Sherbourne, get from you copies of the  
2 transcripts. It was always to be from White House  
3 counsel to Treasury counsel, in a generic sense, or  
4 Treasury Department. It wasn't asking us  
5 individually for it.

6 But it was clear throughout this entire  
7 period that the White House wanted copies of the  
8 transcripts, that they needed copies of the  
9 transcripts, that they had not been able to take  
10 either interviews or depositions themselves of  
11 certain witnesses, that Cutler couldn't complete his  
12 investigation, that it was critical for both the  
13 investigation as well as his report to both the  
14 President and to the Congress. And we were dealing  
15 with that on a legal basis as to whether or not there  
16 was legally -- there was anything legally  
17 inappropriate or improper in providing that.

18 Q Did you have any discussions with anyone in  
19 the White House counsel's office with regard to how  
20 they were going to conduct their investigation?

21 MS. STERGIS: Objection to relevance.

22 MR. O'CALLAGHAN: Once again, relevance

1 here, I'm looking to -- I don't want to make the  
2 testimony for the witness either. I'm looking in to  
3 see how the White House intended to run the  
4 investigation, whether they intended from the start  
5 to interview people or if they hadn't. That will go  
6 to the issue of transcripts, access to transcripts  
7 when they were first asked for, et cetera.

8 So, could you answer --

9 MR. BUCKLES: The one thing we need to be  
10 careful on on this is getting into too much detail  
11 where we may run into some kind of executive  
12 privilege issue with the White House, because that is  
13 something we haven't explored to this date. I can  
14 understand I think -- as I understand it, they are  
15 answering some general questions on this, and I  
16 wouldn't object to Mr. Moscato doing that. If we get  
17 into too much detail, I feel like we would have to  
18 make some sort of contact with the White House.

19 I can see possibly the relevance, but you  
20 realize any time we are talking about what was going  
21 on inside the White House, it kind of raises a  
22 different issue for us that I'm not sure we are at

1 liberty to waive a possibly executive privilege in  
2 this area.

3 MR. O'CALLAGHAN: Okay. For the record, if  
4 you intend -- if there is an intention to state an  
5 executive privilege with regard to not responding to  
6 the question, the basis for it could be stated on the  
7 record as well when it is made.

8 But I don't think this question will elicit  
9 a type of response where that would be necessary.

10 THE WITNESS: My recollection today is that  
11 there were discussions that I had with Jane and/or  
12 Sheila with respect to whether they were going to get  
13 access to the transcripts and for this reason.  
14 Cutler was able to do interviews, if he wanted, of  
15 White House employees. This was a matter of course.  
16 He could have mandated it.

17 BY MR. O'CALLAGHAN:

18 Q If I can interrupt you for a moment. If  
19 you could try to put the conversations in approximate  
20 time period, it would be helpful.

21 A The best I can give you is early July. The  
22 depositions I believe began July 5th or certainly a

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1 day or two before or after that.

2 Up until that time, there were discussions  
3 as to how was the OGE investigation going to proceed,  
4 and there were a wide range of discussions about who  
5 was going to participate, what were the ground rules,  
6 who would have access to the information, how would  
7 we ensure that we didn't have missteps, is there  
8 anything we could do to ensure that these  
9 investigations would go forward and could be  
10 completed in a time frame that met both the needs of  
11 the department and the White House counsel and the  
12 Congress.

13 I remember there being discussions, but I  
14 can't say specifically with whom, with respect to if  
15 they get access to the transcripts, then they  
16 wouldn't have to participate in the depositions or  
17 wouldn't have to do separate interviews or wouldn't  
18 have to do their own depositions.

19 I just have a very general and somewhat  
20 vague recollection of those conversations taking  
21 place.

22 Q Do you have a recollection as to when, if

1 ever, the White House was told that they were going  
2 to be given access to the transcripts?

3 A Sometime in July, but I don't remember  
4 when. I know that there were discussions with White  
5 House counsel about that, someone in the White House  
6 counsel's office.

7 I recall that at some point we came to the  
8 conclusion that there was nothing that legally  
9 prohibited the Secretary from authorizing those  
10 transcripts to go to the White House, that there was  
11 nothing improper or inappropriate in terms of any  
12 violation of a standard of conduct.

13 It didn't violate any Treasury regulations,  
14 and that in fact, one of us -- and it may have been  
15 me -- indicated that we probably could be accused of  
16 obstructing an investigation if we did not provide  
17 the information to the President's counsel, who was  
18 conducting a lawful investigation.

19 We could have either inadvertently or  
20 otherwise been accused of causing him to provide less  
21 than complete and accurate information to Congress.

22 These were the ideas, the concerns that

1 were being raised. Once the decision was made by all  
2 of us, and there were four of us, and there was no  
3 objection by the Independent Counsel -- not the  
4 Independent Counsel -- the Inspector General who we  
5 checked with, then it went forward.

6 But I don't know the exact timing of it. I  
7 am thinking it was sometime in mid-July.

8 Q The four people you referred to were  
9 Knight, Schmalzbach, McHale and yourself?

10 A That's correct.

11 Q Do you recall whether there was -- just to  
12 help frame the time period, do you recall when you  
13 were told that the White House wasn't going to do  
14 interviews outside of members of the White House?

15 A No, I don't. They, in fact, did four  
16 interviews outside the White House.

17 Q I guess to be more accurate, the question  
18 should be whether you were told that the White  
19 House -- were you ever told that the White House  
20 counsel's office wasn't going to interview everyone  
21 they needed to to complete their investigation?

22 A I wasn't told that. I don't recall being



1 told that. I'm a little concerned there is a  
2 misimpression here. I was not told at any time how  
3 they were going to do their investigation or who they  
4 were interviewing or who was doing it. I do know  
5 that Cutler was asked by the President or actually  
6 the Chief of Staff to do it and it was being done.  
7 But we never discussed the mechanics of what the  
8 White House counsel was doing, as I recall. I don't  
9 want to leave you with that impression.

10 Q During late July 1994, in and around the  
11 22nd and 23rd of July, did you have any conversations  
12 with Francine Kerner with regard to releasing the  
13 transcripts to the White House?

14 A Did I personally?

15 Q Correct.

16 A I may have, but I don't recall right now.

17 Q Did you have any conversations at all  
18 during July with Ms. Kerner with regard to releasing  
19 the transcripts?

20 A I think I just answered that.

21 MS. STERGIS: Objection; vague. To whom?

22 MR. O'CALLAGHAN: To the White House.

1 THE WITNESS: I may have. I don't recall.

2 BY MR. O'CALLAGHAN:

3 Q Were you involved in any conversations with  
4 Mr. McHale with regard to releasing the transcripts  
5 between July 21st and July 23rd?

6 A Yes. As part of the group that I mentioned  
7 to you, we had discussed this before the letter was  
8 sent. I'm sure that I had some conversation between  
9 the 21st and 23rd, primarily because this letter  
10 didn't go out until the 23rd, but I don't have  
11 anything other than the general recollection that I  
12 already testified about.

13 Q Did you have any conversations with Bob  
14 Cesca between the 21st and 23rd with regard to  
15 release of transcripts?

16 A I don't recall ever speaking with Bob  
17 Cesca. As of today, I don't recall ever speaking  
18 with Bob Cesca about his investigation or about the  
19 transcripts. I could be wrong about that.

20 Q Did anyone at White House counsel's office  
21 ever tell you that they were undertaking an  
22 investigation to provide facts for the Office of

1 Government Ethics during this time period?

2 A That they were providing facts to the  
3 Office of Government Ethics?

4 Q Correct.

5 A Not that I recall.

6 Q Do you have any knowledge of any contacts  
7 with the White House's counsel's office and Office of  
8 Government Ethics during July of 1994?

9 MR. PORTNOY: Objection. What is the  
10 relevance to the release of information to the White  
11 House from the Treasury Department or to the Treasury  
12 Department from the IG's office?

13 MR. O'CALLAGHAN: It is with regard to  
14 release of transcripts and the OGE report in  
15 general.

16 MR. PORTNOY: There is no question that OGE  
17 received the transcripts and that it received them  
18 from the Inspector General's office. I'm wondering  
19 what the relevance is of White House contacts with  
20 OGE.

21 MR. O'CALLAGHAN: It goes to what  
22 information may or may not have been received by the

1 White House with regard to the report and the  
2 transcripts and also the information contained  
3 within.

4 MS. STERGIS: The resolution only speaks to  
5 whether Treasury transmitted that.

6 MR. O'CALLAGHAN: I will withdraw the  
7 question.

8 I would like to take a quick five-minute  
9 break and then I will be wrapping up.

10 (Recess.)

11 MR. O'CALLAGHAN: Let's go back on the  
12 record.

13 BY MR. O'CALLAGHAN:

14 Q Please let me know if I asked this right  
15 before we went off the record. I want to know that I  
16 ask the right question. Did you ever hear that Jane  
17 Sherbourne told anyone that she was actually doing a  
18 report for the OGE?

19 A I don't recall that at all, no.

20 Q I would like you to take a look at 6877 one  
21 more time. I have a couple more questions with  
22 regard to this document.

1           There are some terms discussed in the  
2 second paragraph of the letter, which reads "as we  
3 discussed, these transcripts are being provided to  
4 you solely to assist you in the preparation for  
5 Mr. Cutler's testimony before the House and Senate  
6 Banking Committee hearings. We have agreed that the  
7 transcripts we are providing to you with this letter  
8 will not be disclosed publicly or shown to  
9 individuals (other than Mr. Cutler), who may be  
10 called as witnesses by the committee until such time  
11 as we advise you that this restriction is no longer  
12 necessary. Similarly, you have agreed not to  
13 disclose these transcripts to counsel for any such  
14 individuals."

15           Who drafted the specific language for the  
16 terms that are contained in the second paragraph that  
17 I just read?

18       A   My recollection is that the first draft was  
19 done by Mr. McHale based on discussions that Ed  
20 Knight and I and Steve and Ken Schmalzbach had  
21 regarding the conditions of use.

22       Q   What was the process that occurred to

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1   conclude that these conditions would be attached to  
2 the transfer of the transcripts?

3       A   The entire deliberative process? The first  
4 step was determining whether or not the request was  
5 within the scope of what Mr. Cutler was doing and did  
6 he really have a need for them, and that was a  
7 given. I don't think there was a lot of discussion  
8 about that.

9           The primary focus of our inquiry was to  
10 ensure that there was no legal reason that would  
11 preclude us from sharing that. It is not just a  
12 matter of statutory law but regulations, standards of  
13 conduct, potential for compromising ongoing  
14 investigations. There is a long range or wide range  
15 of inquiry that was done among us as we discussed the  
16 request, was there any reason at all that the  
17 disclosure of these transcripts or the sharing of  
18 these transcripts should not be made.

19           The reverse of that, is there any reason it  
20 should be made. And clearly as I mentioned before,  
21 one of the overriding concerns was that the President  
22 had asked Mr. Cutler to conduct a thorough

1 investigation as to what happened, so that there was  
2 in fact another, the fourth or the fifth lawful  
3 investigation of these contacts, and secondly, that  
4 Mr. Cutler was expecting to use as a basis of his  
5 testimony before Congress the results of that  
6 investigation.

7 I believe I among others raised the concern  
8 that if we did not share the transcripts and did not  
9 provide the information which he did not have up  
10 until that time, as we were aware, of at least some  
11 of the witnesses, that we could be accused of either  
12 obstructing a lawful investigation, and I use that  
13 term broadly, "obstructing," and also inadvertently  
14 could cause perhaps Mr. Cutler to provide information  
15 to the Congress and to the President that was  
16 incomplete or inaccurate or faulty, and we did not  
17 want to put ourselves or the Secretary or Mr. Cutler  
18 into that position.

19 Once we had arrived at that decision, the  
20 question was, well, if we are going to share the  
21 transcripts with White House counsel, out of an  
22 abundance of caution, are there conditions that would

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1 be appropriate to place on them so that, again, it  
2 wouldn't otherwise interfere with ongoing  
3 investigations.

4 The Senate and House, who I had been  
5 dealing with, were in the process of conducting their  
6 own inquiry, and we had been conducting depositions  
7 or interviews. The IG had finished part of it -- the  
8 Independent Counsel had finished part of it but had  
9 not completely closed his investigation, so there may  
10 be ongoing things, depending on what happened during  
11 the course of the hearings.

12 The OGE investigation just hadn't  
13 terminated yet. We hadn't gotten the final report.  
14 The Secretary hadn't received it. We wanted to make  
15 sure to the extent we could figure out where all the  
16 potential traps were, that we had if we could have  
17 anticipated them and addressed them in a way that  
18 didn't compromise the investigation but at the same  
19 time didn't artificially constrain White House  
20 counsel.

21 As a consequence, we came up with the ones  
22 that you see here, that they were to be provided only

1 to White House counsel, he could only use them for  
2 this purpose, he couldn't show them to anyone else,  
3 couldn't share them with counsel until we had  
4 released it.

5 We thought this would provide Mr. Cutler  
6 and of course his staff, Jane and Sheila, and there  
7 may have been another attorney who was working with  
8 him on his testimony, with the information he needed,  
9 and at the same time safeguard, to the extent that we  
10 could without artificially constraining him, that  
11 information so that other investigations such as the  
12 one that the Senate and House were doing, that I was  
13 working with them on, wasn't compromised.

14 Q Have you ever heard that the terms of the  
15 agreement contained in paragraph 2 were ever violated  
16 by White House counsel's office?

17 A I'm aware that there was a news report by  
18 John Solomon that, depending on how it was read,  
19 could have indicated that the transcripts -- or the  
20 information in the transcripts was used by  
21 Mr. Cutler. I don't know enough about what in fact  
22 happened to draw the conclusion that this agreement

1 was violated.

2 Q If the information contained in the  
3 transcripts but not the -- if the information  
4 contained in the transcripts was used by White House  
5 counsel's office to approach witnesses and inform  
6 them that their testimony was contradicted by someone  
7 else's testimony, would that constitute to you a  
8 violation of the agreement?

9 MR. PORTNOY: In what context? In any  
10 context?

11 MR. BUCKLES: And at what time?

12 BY MR. O'CALLAGHAN:

13 Q Let's say the time period of the 23rd  
14 through the 27th of July.

15 MS. STERGIS: Could I have the question  
16 read back, please.

17 (The reporter read the record as requested.)

18 MR. PORTNOY: I am going to object and ask  
19 that you explain to the witness what purpose the  
20 White House may have had in addressing the witnesses  
21 and not ask him to guess or divine what the White  
22 House's purpose might have been.



1 MR. O'CALLAGHAN: I don't think it is my  
2 place to divine a purpose for the White House action,  
3 just whether or not the use of the information  
4 violated, a potential use of the information as I  
5 described it would have been a violation of the  
6 agreement in the abstract.

7 MR. PORTNOY: Just to restate my objection,  
8 you are posing a hypothetical to the witness, and I  
9 am asking you to define the terms of your  
10 hypothetical more clearly. I'm not asking you to  
11 guess what the White House's motives were. But since  
12 you are positing the situation, I would ask you to  
13 provide what I would view as a more complete  
14 picture.

15 MR. O'CALLAGHAN: I think I have provided  
16 as complete a picture as I would like to for the  
17 purpose of this question.

18 MS. STERGIS: Just a second.  
19 (Counsel conferred with the witness.)

20 THE WITNESS: I can't answer that  
21 question. That is not what I understand the facts to  
22 be from the Solomon article.

1 BY MR. O'CALLAGHAN:

2 Q Apart from the Solomon article, if it was  
3 brought to your attention that that actually did  
4 happen, do you have an opinion as to whether that  
5 would have been violative of the terms?

6 MS. STERGIS: Objection. Provided for what  
7 purpose and what time?

8 MR. O'CALLAGHAN: I already gave the time  
9 frame the 23rd to the 27th. I'm not specifying a  
10 purpose, just whether or not the use of that  
11 information in the way that I framed it would in your  
12 opinion have been violative.

13 THE WITNESS: It is too -- the hypothetical  
14 is too hypothetical and requires some kind of  
15 speculation. I can't answer your question. I don't  
16 have enough facts in that context.

17 BY MR. O'CALLAGHAN:

18 Q The question as I posed it, if the  
19 information was used in the way I just described  
20 it -- actually, no. I'm not going to speculate. If  
21 you can't answer the question, you can't answer the  
22 question.

1 A I just can't answer the question.

2 Q During your conversations with Mr. Knight,  
3 Schmalzbach and McHale, were there any discussions  
4 with regard to whether or not there was any  
5 confidential RTC information contained in the  
6 transcripts?

7 A There were RTC witnesses I know who were  
8 deposed. I think there were three or four of them.  
9 I have a vague recollection that there was some  
10 determination made that the information that was  
11 contained therein was already public. I just don't  
12 have enough -- I just don't recall much more than  
13 that. I don't recall at this point what the  
14 discussions were, other than I remember there being a  
15 question as to whether or not the information had  
16 been public.

17 Q Do you have a recollection with regard to  
18 who raised the issue?

19 A No. It was just among us.

20 Q Do you have a recollection when that  
21 conversation took place?

22 A I'm not sure with that specificity of

1 dissecting out the transcripts in that regard. I do  
2 know that they were provided to White House counsel,  
3 but I don't think that there was any exegesis of the  
4 testimony.

5 MR. O'CALLAGHAN: I have no further  
6 questions at this time.

7 EXAMINATION

8 BY MR. PORTNOY:

9 Q Good morning, sir.

10 A Good morning.

11 Q My name is Jim Portnoy. I am counsel for  
12 the Democratic staff on the special committee, and I  
13 have just a few questions.

14 To your knowledge, did anybody in the  
15 Treasury Department's Office of General Counsel make  
16 any effort whatsoever to limit the scope of the  
17 Inspector General's investigation?

18 A Absolutely not.

19 Q Did anybody in the Treasury Department as a  
20 whole make any such effort?

21 A No, not that I'm aware of.

22 Q Are you aware of any effort by anyone in

1 the Treasury General Counsel's Office to try to  
2 direct the results of the investigation in any way?

3 A No.

4 Q Are you aware of any effort by anyone in  
5 the Treasury Department as a whole to direct the  
6 results of the investigation in any way?

7 A No.

8 Q Are you aware of any effort by anyone  
9 outside the Inspector General's office or the Office  
10 of Government Ethics to direct the investigation in  
11 any way?

12 A No.

13 Q To the best of your knowledge, was the  
14 integrity of the investigation compromised in any  
15 way?

16 A No.

17 Q You indicated earlier, sir, that you were  
18 asked to play a role in coordinating the department's  
19 handling of issues arising out of the White  
20 House-Treasury contacts?

21 A Not the White House-Treasury contacts. But  
22 I was the point person for the department's -- the

1 department's liaison with the Independent Counsel,  
2 the House and Senate Banking Committees on both  
3 Whitewater issues as well as Foster issues.

4 Primarily I worked with Majority and  
5 Minority counsel of both the House and Senate  
6 committees as they were getting ready for the  
7 hearings in terms of document production and  
8 redactions and special handling and confidentiality  
9 agreements and a variety of things that came up.

10 On the House side, they invited us to  
11 attend the interviews. They did not do depositions.  
12 That was primarily the role.

13 Q Would that normally be the kind of work  
14 that you would do?

15 A I did a lot of that work. Previously I was  
16 the department's liaison on a number of Congressional  
17 investigations, not of the department necessarily,  
18 but as they related to POW/MIAs, October Surprise,  
19 BCCI, B&L, a number of their investigations, whenever  
20 we got massive document requests that required both  
21 production of the documents and search of a large  
22 number of them of the department's to ensure that all

1 the documents had been identified and turned over;  
2 preparing witnesses to testify or to be interviewed  
3 by the various committees; making sure the witnesses  
4 were available; making sure they were familiar with  
5 what the committee wanted to ask them about.

6 There were instances where executive  
7 privilege issues came up, anything relating to Secret  
8 Service, to IRS, 6103 cases. That's what I did a lot  
9 of.

10 Q Would you describe your involvement such as  
11 it was in the Inspector General's investigation as an  
12 outgrowth of your role as a point person for the  
13 Congressional investigations and the Independent  
14 Counsel investigation?

15 A I had nothing to do with the Inspector  
16 General's investigation. I was a resource if they  
17 needed it. I did not know what they were doing. I  
18 accepted the extent that they had been taking  
19 depositions, and I had an idea if they needed, like,  
20 for instance, in the DeVore situation, they asked for  
21 assistance, an idea of what the timing was because I  
22 was there and I was assisting the Secretary and the

1 department in preparing the Secretary for his  
2 testimony, and there was an urgency that we had  
3 because of the time frames. We wanted to make sure  
4 that anything that they needed, they could come to  
5 me, among other people.

6 Q So you would describe your role as that of  
7 a resource?

8 A Yes.

9 Q Did anybody up the chain of command, above  
10 you in the chain of command, ask you to serve as a  
11 resource?

12 A I think it was just a natural outgrowth. I  
13 don't remember there being a formal request for me at  
14 that time. The acting Inspector General, or OGE,  
15 although OGE came back to us, the group of senior  
16 attorneys with Ed Knight, I believe in one instance,  
17 asking for some legal research assistance. But I  
18 think we were there -- this is a very unusual  
19 situation. We didn't know what to expect. It was  
20 really a matter of trying to be prepared for anything  
21 that anyone needed so that there wasn't a delay, an  
22 artificial delay in either the inquiry that the

1 Office of Government Ethics was doing or subsequent  
2 preparation of the Secretary.

3 Q How did this informal group comprised of  
4 you and Mr. Schmalzbach and Mr. McHale and Mr. Knight  
5 come into existence?

6 A As I mentioned, we got the subpoena and  
7 somebody had to be in charge of it. The problem was  
8 that both the Deputy Secretary and General Counsel  
9 were at least initially implicated in the activities  
10 that surrounded the contacts.

11 I'm not sure if it was an informal or a  
12 formal request the Secretary made of Ed Knight, but  
13 he was the coordinating point for preparing the  
14 documents for production to the grand jury. As a  
15 former assistant U.S. Attorney, I had a lot of  
16 attorneys with that. I have run grand juries myself,  
17 and they thought I would be a good liaison to make  
18 sure the work got done.

19 Then we tried to figure out what is the  
20 best way to search the department. Again, they felt  
21 that the resources, the experience I had --

22 Q To be clear, sir, your informal group was

1 already in existence --

2 A That's right.

3 Q -- prior to the Secretary asking the Office  
4 of Government Ethics to investigate?

5 A No. That occurred on March 3rd. On March  
6 4th came the subpoena. On March 7th I was asked to  
7 begin working with it. I recommended that we get IRS  
8 inspectors to come in.

9 Q Why did you do that, sir?

10 A Because the scope of the subpoena was  
11 broad. We had one chance of doing it right. It had  
12 to be done by people who knew what they were doing.

13 I remember Dennis Foreman saying well,  
14 maybe the lawyers could do the search, and I told him  
15 point blank there was no way they could do it. We  
16 had to have people who knew what they were doing,  
17 because it involved computers.

18 I don't mean that pejorative of lawyers.  
19 We were dealing with something very serious here,  
20 where the Hill and the OGE and the Independent  
21 Counsel had confidence in the integrity and the  
22 credibility of what we had done. As I mentioned, we



1 had one chance to do it right.

2 So they brought over a dozen, a dozen and a  
3 half senior inspectors, and for 30 hours straight we  
4 searched computers and offices and files.

5 Q This was in response, sir, to the  
6 Independent Counsel subpoena?

7 A That's right.

8 Q So, to the extent this informal group ever  
9 came into existence, it was in response to the  
10 Independent Counsel's subpoena?

11 A That's right. We sort of stayed informal.  
12 Steve McHale was tasked with, sort of in terms of the  
13 mechanics, the actual physical production of the  
14 documents. There were issues of privilege that came  
15 up, issues of sensitivity. There was a question of  
16 executive privilege, the potential executive  
17 privilege that had to be dealt with on a legal  
18 basis. And we had a continuing obligation under the  
19 grand jury subpoena. I was the point person for  
20 that.

21 We also were providing witnesses at least  
22 to the investigation, not to the grand jury, and we

1 wanted to make sure those witnesses had available to  
2 them the documents that came from their offices, were  
3 prepared to provide whatever information the  
4 Independent Counsel wanted and went through the  
5 process.

6 Q At what point did your tasks come to  
7 include preparing Secretary Bentsen for Congressional  
8 testimony, specifically with respect to the matters  
9 under discussion here today?

10 A I guess we always -- ever since there was  
11 Resolution 229 -- is that the one from last year? Do  
12 you remember the date of that? Could you help me  
13 with that? Whatever the date of that resolution was,  
14 it became clear to us that the end result, end  
15 product of a lot of our work would be useful since we  
16 were sure the Secretary would be asked to testify,  
17 since he is the one that asked for the investigation  
18 by the OGE. It was going to be his report to the  
19 Congress.

20 It was his records, that is, of the  
21 department that had been the basis for a number of  
22 investigations, and he would be called to explain

1 whether or not in fact we had done everything  
2 possible that we could do to make sure that all the  
3 information that was relevant and responsive had been  
4 given to the Independent Counsel and to the  
5 Congress.

6 Q So, you knew from the first that you would  
7 be required in some fashion to assist the Secretary  
8 in preparing his testimony?

9 A Right.

10 Q In the normal course of preparing a ranking  
11 department official for testimony, would you engage  
12 in fact-finding of some sort?

13 A Depending on what the testimony was about.  
14 We have gone through recently Waco hearings and Ruby  
15 Ridge hearings and as I mentioned before, I was kind  
16 of the point person for a number of the Congressional  
17 investigations. To the extent that we could glean  
18 what the facts were from the documents we were  
19 producing or the individuals we were providing  
20 testimony, there would be some of that. In this  
21 case, there was very little, if any, of it because it  
22 was being done by outside --

1 Q Were there any limits imposed on your  
2 ability to collect facts with respect to the events  
3 in issue here?

4 A You mean -- we did not collect facts, the  
5 four of us. In fact, I recall, but I don't know the  
6 context, that a decision had actually been made that  
7 the Treasury would not conduct its own investigation,  
8 which put us at a severe disadvantage. In most  
9 cases, we were the only ones who didn't know what was  
10 going on, which made it difficult to at times respond  
11 to the Congress, to the Senate and the House on  
12 documents. We didn't know, for instance, in some  
13 cases whether a document was in fact responsive. If  
14 we had information, we would have known it was.

15 There were a couple of instances where Mike  
16 Chertoff and Bill Codinha, the Minority and Majority  
17 counsel for the Senate special committee last summer,  
18 were upset by the fact that they had not gotten  
19 certain information or information had been  
20 redacted. It was because we did not know what the  
21 import of it was. Once it was explained to us, we  
22 went back and not only unredacted documents but went

1 back and conducted further searches.

2 We made a dozen different productions last  
3 year.

4 Q To go back, do you know why that limitation  
5 regarding the Treasury Department investigation was  
6 imposed?

7 A I think it was to ensure the integrity of  
8 the process. At least that's what we operated  
9 under.

10 Q Do you know who made the decision to impose  
11 the limitation?

12 A I think it was a combination of the  
13 Secretary and Ed Knight. I don't know that for a  
14 fact. I don't know that from firsthand information.  
15 At least I don't recall it. But I believe it was as  
16 a result of the Secretary sending it over to the  
17 OGE.

18 Q You testified that the limitation on  
19 independent Treasury investigation made your witness  
20 preparation process more difficult?

21 A Yes.

22 MR. O'CALLAGHAN: Just for consistency,

1 explain how this is in the scope.

2 MR. PORTNOY: One of the issues addressed  
3 in the resolution is the transmittal of information  
4 from the Inspector General's office to the Treasury  
5 Department, I believe. This is pertinent to the  
6 Treasury Department's need for access to information  
7 developed by the Inspector General's office.

8 MR. O'CALLAGHAN: The transcripts? The  
9 resolution specifically is dealing with the  
10 transcripts.

11 MR. PORTNOY: That's correct. That's  
12 correct.

13 BY MR. PORTNOY:

14 Q If I might, sir, did the limitation on  
15 independent investigation heighten your need to find  
16 other sources for information to prepare the  
17 Secretary?

18 A I don't want to put too fine a point on  
19 this. It wasn't that we were out trying to conduct  
20 another investigation. The problem was at least for  
21 me -- the focus of my responsibilities was more  
22 narrow.

1 My primary responsibility was ensuring that  
2 the documents that were being produced to the  
3 Congress and previously to that time to the  
4 Independent Counsel and subsequently to the IG were  
5 complete and fully responsive, that they had what  
6 they needed, and that was as a result of the request  
7 that came in.

8 As an example, I found it difficult in some  
9 cases to determine whether or not the document was  
10 responsive, because I didn't know what the factual  
11 predicate was.

12 As an example, the senior officials of the  
13 department meet with the Secretary two or three times  
14 a day. Rather than turning over every single meeting  
15 the Secretary had with one of his officials, unless  
16 we could determine there was a date or whatever of a  
17 meeting was important, it was impossible without  
18 doing totally a dump of the Secretary's calendar to  
19 provide the information that Congress wanted.

20 Q Did your receipt of the deposition  
21 transcripts facilitate the process by which you  
22 prepared the Secretary for his testimony?

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1 A Eventually.

2 Q Did the Office of General Counsel's receipt  
3 of a draft of the Inspector General's report  
4 facilitate the process of preparing the Secretary for  
5 his testimony?

6 A By all of us? Yes.

7 Q In your view, would it have been possible  
8 to prepare the Secretary adequately without access to  
9 those materials?

10 A It would have been very difficult. I think  
11 it would have been difficult for the Secretary to do  
12 it. Part of it was the timing. We didn't know when  
13 the Secretary was going to testify. As you recall,  
14 Mr. Cutler testified at least at the front end of the  
15 House hearing. I don't recall if it was the front  
16 end of the Senate hearing or not.

17 If we had had to do that with the  
18 Secretary, we would have literally had four or five  
19 days to prepare him, and that would have been  
20 impossible.

21 Q You testified earlier, sir, that at some  
22 point, an indeterminate point during the months of

1 June and July of 1994, you had some conversations  
2 with the White House counsel's office that pertained  
3 in some fashion to the OGE inquiry or the Inspector  
4 General's investigation?

5 A Yes. During June and July of '94, yes.

6 Q Did any of those discussions, sir, involve  
7 the substance of the Inspector General's inquiry?  
8 Let me ask you more precisely.

9 A Yes.

10 Q In any of those conversations, did you  
11 convey to anybody in the White House any factual  
12 information that had been developed in the course of  
13 the Inspector General's inquiry?

14 A Not in the course of the Inspector  
15 General's inquiry. I didn't have any facts from the  
16 Inspector General. I later got it other places but  
17 not from the Inspector General.

18 Q To your knowledge, did anyone else at the  
19 Office of General Counsel convey to anyone in the  
20 White House any factual information developed during  
21 the course of the Inspector General's inquiry?

22 A On the contrary. I don't believe that

1 anybody, at least the four of us that were working  
2 daily together, ever received any information from  
3 the Inspector General that was substantive or  
4 factual, and so that was not communicated to the best  
5 of my knowledge.

6 Q To close the loop, sir, to the best of your  
7 knowledge, did anyone convey any factual information  
8 to the White House concerning the facts developed in  
9 the course of the Inspector General's inquiry?

10 A I can't speak for the Inspector General's  
11 office. I don't know what they communicated to the  
12 White House. Personally, I know of nobody who  
13 communicated anything in that regard.

14 MR. O'CALLAGHAN: What was the time period  
15 on that?

16 THE WITNESS: June and July.

17 MR. PORTNOY: Yes.

18 THE WITNESS: Can I back up a minute? When  
19 you say June and July, we did communicate on July  
20 23rd the transcripts. I don't want to mislead you  
21 that no time in July. I assume we are talking about  
22 prior to actually getting the transcripts.



1 BY MR. PORTNOY:

2 Q Let me break it down for you, sir. Prior  
3 to the transmittal of the transcripts on July 23rd,  
4 are you aware of anybody who conveyed any factual  
5 information concerning the Inspector General's  
6 inquiry of the White House?

7 A No, I'm not. No.

8 MS. STERGIS: Other than the provision to  
9 the individual witnesses by the IG?

10 BY MR. PORTNOY:

11 Q Let's exempt from this, from the  
12 definition, anybody the Inspector General's office or  
13 the Office of Government Ethics. Anyone outside  
14 those two organizations.

15 A I know of no one.

16 Q To bring them back within our rubric, are  
17 you aware of any transmittal of information by  
18 Francine Kerner?

19 A To the White House?

20 Q To the White House counsel.

21 A During the period June to July?

22 Q July 23rd.

1 A At this time I'm not aware of. I don't  
2 think I was aware of at any time then. I just don't  
3 recall.

4 Q You testified that you received copies of  
5 the deposition transcripts on either the 18th or 19th  
6 of July.

7 A That would have been the earliest I would  
8 have received them. I really don't recall. It could  
9 have been later than that. I have a vague  
10 recollection actually it was later, but I don't know  
11 why. I also have a vague recollection that I had to  
12 ask for them before I got them, but I don't -- all I  
13 can say is sitting here today, it seemed to me that  
14 it was much after the 18th or 19th, but I can't swear  
15 to that. I just don't have a strong recollection of  
16 the precise time period.

17 Q Do you recall from whom you received them?

18 A I believe I received them from either Steve  
19 McHale or from Ken Schmalzbach, certainly from their  
20 office. They were the point of contact for that.

21 Q To your knowledge, did anyone in the Office  
22 of General Counsel have copies of the deposition

1 transcripts before they were conveyed to Mr. McHale  
2 or Mr. Schmalzbach on approximately July 18th?

3 A I don't have any knowledge of that  
4 currently.

5 Q To your knowledge, did anybody in the  
6 Treasury Department outside of the Office of General  
7 Counsel or the office of Inspector General and  
8 Mr. Knight, who had sort of a hybrid role here,  
9 receive copies of the deposition transcripts prior to  
10 July 18th when they were conveyed to Mr. Schmalzbach?

11 A Not that I'm aware of.

12 Q Are you aware, sir, that the draft of the  
13 Inspector General's report was provided to Secretary  
14 Bentsen during July?

15 A That's right, to both Secretary and to  
16 OGE.

17 Q And that occurred, I believe, on the 22nd  
18 of July?

19 A It was around there. I don't have a  
20 current recollection of exactly the date, but it was  
21 sometime in that time frame, plus or minus a couple  
22 of days. I just don't have the exact date.

1 Q Did you ever receive a copy of the draft?

2 A I'm sure that I did. I don't recall it,  
3 though. That would have been something that would  
4 have been handled primarily by Ken's shop.

5 Q Did you receive a copy of a draft at any  
6 time prior to July 22nd?

7 A I don't remember. I may have. I don't  
8 know what the timing is here.

9 Q Did you receive a copy of the draft at any  
10 time prior to the draft being conveyed to Secretary  
11 Bentsen?

12 A I believe that there was a draft that was  
13 provided. I don't know if it was that one or if  
14 there was one before that.

15 Q You have no specific recollection?

16 A I do have a recollection of assistance  
17 being provided to Francine to flyspeck the  
18 transcripts. I don't know right now if that's the --  
19 if it was done with that one or one previous to  
20 that. I just don't have a recollection. I suspect  
21 it may have been previously, but I don't know.

22 Q Sir, I'm now handing you a document Bates

1 stamped 15486 and 87, a July 25, 1994 memorandum for  
2 Ed Knight from you. The subject is "Rollout of the  
3 IG report."

4 MR. O'CALLAGHAN: You misread the subject.

5 MR. PORTNOY: "Rollout of OGE report."

6 Thank you for the correction.

7 BY MR. PORTNOY:

8 Q Under "Review group" is a bullet beginning  
9 with the word "decide." Could you read that for us,  
10 sir.

11 A Yes.

12 (Witness examined the document.)

13 Q Do you recognize that document, sir?

14 A Yes.

15 Q Did you prepare it?

16 A Yes.

17 Q Would you read into the record the portion  
18 I asked you to look at, sir.

19 A Is it this one here?

20 Q Yes.

21 A Title is "Review group." "Decide who the  
22 staff review group (SRG) should be (Ken and his

1 attorneys?) to flyspeck the OGE report and have them  
2 stand by."

3 Q Does that refresh your recollection as to  
4 when OGE attorneys may have assisted in flyspecking  
5 the draft report?

6 A We are talking about really two different  
7 things here. When you were talking about the IG, the  
8 IG prepared a chronology. It did not prepare a  
9 report. I know the terms are used interchangeably.  
10 The OGE report is the report we saw on July 30th. Is  
11 that when we got it? Whenever it was sent to the  
12 Secretary.

13 We had no idea what the findings were going  
14 to be. This whole purpose was once we got the actual  
15 OGE report, what are we going to do.

16 So, you were talking before about the IG.  
17 I thought what you were referring to -- and if I was  
18 mistaken I apologize -- was the IG chronology, not  
19 the IG report. There was no IG report.

20 Q Actually, sir, I was, and the clarification  
21 is appreciated.

22 A Can we go back so that the record is

1 clear?

2 Q Certainly, if you have a statement for the  
3 record.

4 A Not a statement. But to the extent of the  
5 IG chronology, and I believe that's what you may have  
6 been referring to, we assisted -- Ken's shop assisted  
7 Francine Kerner in making sure that there was the  
8 transcripts and the chronology reflected exactly what  
9 was said, that it was editorial assistance that was  
10 provided to her because she was working alone and  
11 with them.

12 Q You played no role in that, sir?

13 A I don't recall. I may have seen it. I do  
14 remember hearing about it. I do remember her talking  
15 about it, the need for some assistance. I don't know  
16 if she asked Ken or if Ken offered it. But it was  
17 provided. I think you have documents in your files  
18 that show the markup that was submitted.

19 That was a dozen pages of a chronology that  
20 was prepared that was then sent to the OGE. This  
21 refers to the actual OGE report. The idea of the  
22 rollout is what do we do when we get it. That's what

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1 the review group was.

2 Q Let me show you another document, sir.  
3 This one is Bates stamped 15986. It appears to be a  
4 to-do list from July 23rd. I would ask you if you  
5 recognize it and then to look at the first entry.

6 (Witness examined the document.)

7 A I recognize it. It is my handwriting. It  
8 is a to-do list. I prepared one or more of these  
9 every day depending on our meetings, what had to be  
10 done. It was a wide range of areas. Here I use the  
11 term "IG report." I am referring to the chronology.

12 Q The date?

13 A 7/23.

14 Q Would it be fair to say on the 23rd of July  
15 you were concerned about prospectively flyspecking  
16 the IG report?

17 A As a group, not just myself. This was  
18 things for all of us, for somebody to do. It would  
19 be either assigned or, you know.

20 Q Does that refresh your recollection at all,  
21 sir, as to when the flyspecking of the Inspector  
22 General report might have occurred?

1 A It says "done" in the right-hand column,  
2 but that wouldn't necessarily have been on the 23rd.  
3 This list may have just been continued in existence  
4 and it could have been the next day or whatever. But  
5 going back and checking it off, it would be around  
6 that time.

7 Q Would it have been before the 23rd?

8 A No.

9 Q So it would have been the 23rd or after?

10 A Yes, or after.

11 Q For the record, sir, what does  
12 "flyspecking" mean?

13 A It means going through sometimes word by  
14 word or line by line to make sure that what is the  
15 official record is fairly and accurately reflected  
16 and thoroughly reflected in synopsis, in a synopsis  
17 or a summary or whatever, to make sure that important  
18 information isn't dropped, to make sure that what is  
19 said is said.

20 Q So, flyspecking doesn't carry with it the  
21 implication of slanting a report in any way?

22 A No, not at all. It is an editorial issue,

1 like we did on law review. You make sure you  
2 cite-checked. It is an art form.

3 Q To your knowledge, the flyspecking of the  
4 IG's report and the subsequent flyspecking of the OGE  
5 report didn't result in any slanting of those  
6 reports, did it?

7 A No, but it did result -- it has been  
8 pointed out that some of the synopsis or summaries  
9 were not accurate or not complete. I do remember  
10 seeing -- I remember seeing it just recently  
11 yesterday with respect to preparing, but I don't  
12 remember whether I saw it contemporaneously at the  
13 time. But there were notations on documents  
14 indicating that either this isn't what someone said  
15 or what he or she really said was, and quoting the  
16 exact words, and then that was provided to Ms. Kerner  
17 for whatever purposes she might have used it.

18 Q Would it be fair to say that as you  
19 understood the process, the attorneys reviewing the  
20 IG report and the OGE report were trying to ensure  
21 that they were accurate and complete?

22 A Yes, that was all. It was only to provide



1 Francine with whatever their work product was, and  
2 then she could check it or reject it or incorporate  
3 it or make suggestions she would like.

4 Q I would like to show you a document Bates  
5 stamped 6877, much like the one you just returned to  
6 Mr. O'Callaghan.

7 (Witness examined the document.)

8 You indicated that you saw a draft of this  
9 letter, sir?

10 A I believe I did, yes. I'm pretty sure I  
11 saw a draft.

12 Q Could that have been on the 23rd of July?

13 A Yes.

14 Q So, it wasn't necessarily before the 23rd  
15 of July?

16 A No, no. If I said that, I didn't mean to  
17 imply that.

18 Q That was -- the 23rd of July was a  
19 Saturday. Do you recall being in the office on a  
20 Saturday?

21 A I worked for 49 straight days on this  
22 thing. Saturdays and Sundays made no difference to

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1 us.

2 Q So you were consulted for at least part of  
3 the decisionmaking process whereby these transcripts  
4 were conveyed to the White House?

5 A Yes.

6 Q At the time, did you have any objection to  
7 releasing the transcripts?

8 A No. It wasn't an objection. My only  
9 concern was that the circumstances under which they  
10 would be used and further disseminated. As I  
11 mentioned, at this point, if my recollection is  
12 correct, the Senate either had not yet begun its  
13 depositions or -- I guess it had. There was a  
14 problem. The Senate asked us not to provide  
15 information to the individual witnesses until such  
16 time as they completed their individual deposition.  
17 We were trying to juggle that with the request by --  
18 not the request but the interviews that the House was  
19 doing. So we needed to be careful, in terms of  
20 cross-pollination, that it didn't happen, to the best  
21 of our ability to avoid it.

22 Q Now in retrospect, do you have any reason

1 to object to the release of the deposition  
2 transcripts to the White House?

3 A The depositions to Mr. Cutler?

4 Q Yes.

5 A No.

6 Q Was there any discussion amongst you and  
7 Mr. Knight and Mr. McHale and Mr. Schmalzbach as to  
8 what you might do if the Inspector General and the  
9 Inspector General's office objected to releasing the  
10 transcripts?

11 A We wouldn't have done it. I think if the  
12 Inspector General had said no, that would have been  
13 the end of it.

14 Q It was the Inspector General's call, in  
15 your estimation?

16 A Yes. This was not something that we were  
17 imposing on him. We had consulted with him -- every  
18 time we did something, we consulted with the people  
19 who had other things going on. Independent Counsel,  
20 when we turned over our documents in May, before we  
21 did anything, we talked to Independent Counsel to see  
22 if there was any problem. We were trying to be

1 scrupulous in our efforts to maintain the integrity  
2 of the process.

3 Q To your knowledge, did anybody put any  
4 pressure on Mr. Cesca or Ms. Kerner to consent to the  
5 release of the depositions?

6 A If you believe Ms. Kerner can be pressured  
7 or intimidated, you need to have your medication  
8 checked. This woman is just a superb lawyer and took  
9 her job as counsel to the IG very, very seriously.  
10 She had a stellar reputation. I consider her one of  
11 the finest lawyers in the department. I have been up  
12 against her a few times on legal issues, and while I  
13 didn't appreciate the position she was taking, I  
14 certainly respected her ability. There is no way  
15 Francine Kerner or Bob Cesca could have in any way  
16 been importuned. It would have been a death knell, a  
17 career limiting opportunity.

18 Q Your disagreements with Ms. Kerner were not  
19 in connection with this investigation, just for the  
20 record?

21 A Not in connection with this investigation,  
22 no.

1 Q You indicated previously that the  
2 conditions or terms contained in Mr. McHale's letter  
3 to Ms. Sherbourne derived in some measure from your  
4 understanding of the requirements of either the  
5 Senate Banking Committee or the House Banking  
6 Committee?

7 A It was partly that and also partly the  
8 needs of Mr. Cutler.

9 Q Could you elaborate, please, on the source  
10 of those conditions as you understood them.

11 A The House did not put any conditions on  
12 us. The Senate asked us not to share information,  
13 either the documents other than those that came from  
14 the offices of the various individuals or any other  
15 information with the witnesses until such time as  
16 they had an opportunity to conduct their depositions,  
17 and we did not.

18 The OGE however, as I understand it,  
19 provided copies of -- or maybe the OGE and IG  
20 provided copies of individual witness depositions to  
21 those individual witnesses for verification. We had  
22 nothing to do with that.

1 What we were trying to do was to the extent  
2 we were able to assist the committee, not provide --  
3 not have cross-pollination. I believe it was July  
4 25th or so the committee finished their last  
5 deposition, and at that point, after that point we  
6 were able to coordinate with counsel and provide  
7 documents so they could prepare for the hearing.

8 Q So your concerns or the concerns that led  
9 to the conditions stated in this letter were not  
10 intrinsic to the Treasury Department?

11 A Partly. I think what we were concerned  
12 about is that the process not be compromised, and we  
13 still did not have -- the OGE still was conducting  
14 its inquiry. It had not come out with its report.

15 We did not want this information to get out  
16 or the transcripts to be widely disseminated at least  
17 until such time as the Congress concerns or interests  
18 were protected and the OGE, and that didn't happen  
19 until July 30th, at which time the Secretary  
20 himself -- the day after the Secretary himself made  
21 these available to the Congress, although in redacted  
22 form.

1 Q At the time the documents, the depositions  
2 were conveyed to the White House, had anybody  
3 considered whether the depositions contained  
4 confidential information?

5 A From where?

6 Q From the RTC, for example.

7 A As I mentioned earlier, I don't have a  
8 strong recollection of that being a large part of our  
9 discussion or decisionmaking. I do have a general  
10 recollection that there was some discussion about the  
11 RTC, but I can't put it in context, either in terms  
12 of time or substance.

13 Again, I have a vague recollection that  
14 there was some discussion as to whether or not the  
15 information was not already public. But I can't give  
16 you better than that at this point. I just don't  
17 recall that, the fine points of that discussion.

18 Q You are not aware of anybody expressly  
19 advising either you or anyone else involved in the  
20 process of releasing transcripts that they contained  
21 confidential RTC information, are you?

22 A No. I don't recall any discussion, either

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1 among the group of us that met a number of times  
2 during the day or the IG saying don't do it. It was  
3 not an issue that was raised to the point of being a  
4 problem.

5 Q Would it be fair to say that you were  
6 operating under the view that it was the prerogative  
7 of the Inspector General to release the information  
8 if he chose to?

9 A Well, that and also this was a very unusual  
10 situation. This was not an Inspector General  
11 investigation. This was a Secretarial investigation,  
12 and it was being done at his request. They were  
13 serving him.

14 It would be as if -- I guess an analogy,  
15 although it limps a bit, is just like the IRS  
16 inspectors worked with me to do the identification of  
17 documents and production to the grand jury. To say  
18 that that was an IRS investigation would be a  
19 misnomer.

20 Here this was a Secretarial investigation.  
21 He wanted it done. He asked for it. He wanted the  
22 results and wanted to take whatever action was

1 necessary.

2 In fact, the OGE said they had never done  
3 something like this before. So that's why the  
4 Secretary asked IG to provide resources to him and  
5 asked Mr. Ryan to have the same done by RTC.

6 Q Would you say that the results of the  
7 investigation belonged in some sense to Secretary  
8 Bentsen?

9 A Yes, I believe they did.

10 Q And it was his prerogative to do with them  
11 as he saw fit?

12 A Yes. I think it was his investigation.  
13 But I think also had the Inspector General raise an  
14 objection, even if it was merely process, that the  
15 Secretary clearly would have honored that.

16 Q That would have been the Secretary's  
17 decision to honor the Inspector General?

18 A The Secretary was scrupulous in the way he  
19 handled both himself and us and the department,  
20 including not being exposed to information until he  
21 had his own interview done. It was paramount that,  
22 as I said, we never had to address that issue because

1 it was never an issue.

2 What he would have done is really  
3 speculative, but my speculation is that he would not  
4 have done it. I think it would have been a problem.  
5 I don't know how we would have overcome it. He  
6 certainly would have taken into consideration the  
7 Inspector General's concerns, had there been any. To  
8 the best of my knowledge, there never was.

9 Q You stated, sir, that part of your  
10 decisionmaking process in determining whether to  
11 release the depositions was to consider whether there  
12 were any legal impediments to the release. Were  
13 there any?

14 A Not that we were able to find.

15 MR. PORTNOY: Thank you, sir. That's all.

16 MR. O'CALLAGHAN: I have a couple of  
17 follow-up questions.

18 EXAMINATION

19 BY MR. O'CALLAGHAN:

20 Q Mr. McNamara, you just said that the IG's  
21 office expressed no concerns with regard to releasing  
22 the transcripts.



1 A To the best of my knowledge.

2 Q When you refer to IG's office, are you  
3 referring to Treasury IG's office?

4 A Yes.

5 Q Were any concerns expressed by RTC IG's  
6 office about releasing transcripts during this time?

7 A I don't believe so. We are talking about  
8 before they were released?

9 Q Yes.

10 A Not that I'm aware of, no.

11 Q Was RTC IG's office consulted before the  
12 transcripts were released to the White House?

13 A I can't answer that question. I don't  
14 recall if they were or not specifically.

15 Q If the RTC IG's office had said they didn't  
16 want the transcripts released to the White House,  
17 what effect would that have had on your  
18 decisionmaking process during that time?

19 MS. STERGIS: Objection; calls for  
20 speculation.

21 BY MR. O'CALLAGHAN:

22 Q Please answer.

1 A Do you want me to answer?

2 Q Yes, please.

3 A This is pure speculation. I think we would  
4 have had to then sit down and figure out what to do.  
5 We would have tried to figure out what the basis for  
6 their objection was. If it was form or a process,  
7 then we could deal with those pretty easily. If it  
8 was a matter of there being a substantive legal  
9 reason, that would have been perhaps more  
10 problematic, and it could have been handled by any  
11 number of ways, redactions or whatever.

12 Juxtaposed against that is the fact that  
13 there was another lawful investigation going on, and  
14 whether or not the basis for the RTC's objection was  
15 sufficient to override a presidential investigation.  
16 I don't know, quite frankly, where we would have come  
17 out on something like that. It would have posed some  
18 other questions, but certainly RTC's objections would  
19 not have been the end of the discussion.

20 Q Are you familiar with the objections the  
21 RTC had after the transcripts were released?

22 A I understand they had some.

1 Q Are you familiar with what those objections  
2 were?

3 A I believe they said, at least what they  
4 reported was that there was nonpublic information  
5 that had been disclosed over the course of those.

6 Q Are you familiar with any of the nonpublic  
7 information that was identified?

8 MS. STERGIS: Objection. There was no  
9 testimony that in fact there was nonpublic  
10 information.

11 THE WITNESS: I testified that I believed  
12 the information had been public --

13 BY MR. O'CALLAGHAN:

14 Q You testified that --

15 A -- in answer to my earlier question.

16 Q With regard to discussions you had with  
17 Mr. McHale?

18 A No. I had no discussions with them  
19 regarding the post-23rd RTC objections. I was not  
20 involved in that process. That was being handled  
21 directly. I wasn't directly involved in that  
22 process. It was handled by Mr. McHale and

1 Mr. Schmalzbach, as I recall, and perhaps Mr. Knight  
2 at one point.

3 But the nuance that RTC wanted to impose on  
4 this didn't make a lot of sense to me at the time,  
5 although I consider myself something of a bystander.

6 Q If they had brought up the objection that  
7 these things were become aware of before they were  
8 released, would that have had an effect on it?

9 MS. STERGIS: Objection to the form of the  
10 question.

11 THE WITNESS: Ask me the question again,  
12 please.

13 (Counsel conferred with the witness.)

14 THE WITNESS: I prefer not to speculate.

15 BY MR. O'CALLAGHAN:

16 Q At the time the transcripts were released  
17 to the White House, was there any effort made to  
18 contact the RTC IG's office?

19 A I don't know.

20 Q Earlier Mr. Portnoy referred you to a to-do  
21 list of yours that was dated July 23rd, 1994.

22 A Yes.

1 Q Do you recall that?

2 A Yes.

3 Q You said that -- you referred to  
4 flyspecking the IG chronology; is that correct?

5 A Right.

6 Q Did any flyspecking of the IG chronology  
7 occur before July 23rd?

8 A Not that I'm aware of. I don't know. I  
9 would have to look at my notes. I don't know. I  
10 would sort of doubt it if that was on the list of  
11 to-dos for July 23rd and it was indicated it was  
12 done. It would -- I would say maybe the 23rd or  
13 shortly thereafter but not before. This wouldn't  
14 have appeared on a to-do list for the 23rd if it had  
15 not been done.

16 Q Was there more than one flyspecking done  
17 with regard to the IG chronology that you are aware  
18 of?

19 A I think there was only one. At least  
20 that's all I'm aware of.

21 Q I just have a couple more questions. This  
22 is an area I attempted to go into earlier and counsel

1 objected, and I would just like to try to anticipate  
2 any objection and try to address any concerns that  
3 might exist.

4 These questions are going to go directly to  
5 whether -- I'm quoting specific language of the  
6 resolution, whether the report issued by the Office  
7 of Government Ethics on July 31, 1994 or related  
8 transcripts of deposition testimony were improperly  
9 released to White House officials or others prior to  
10 their testimony before the committee on Banking,  
11 Housing and Urban Affairs pursuant to Senate  
12 Resolution 229."

13 I asked you earlier if you were aware of  
14 contacts that the White House counsel's office had  
15 with people at OGE during July of 1994.

16 MR. PORTNOY: I believe the testimony was  
17 whether anyone at the White House had conveyed  
18 anything to anyone at OGE.

19 MR. O'CALLAGHAN: I asked both questions  
20 actually. Let me continue with the line of  
21 questioning.

22 THE WITNESS: Ask me again, Mike. I'm

1     sorry.

2             BY MR. O'CALLAGHAN:

3             Q     That's okay. I have trouble keeping track,  
4     too.

5             The first question I believe I had earlier,  
6     regardless of whether it was asked earlier, I ask  
7     this anew, if you are aware of contacts between White  
8     House counsel's office and OGE in July of 1994.

9             A     I don't recall any.

10            Q     In your conversations with either  
11     Ms. Sherbourne or Cheston, did they tell you they had  
12     contacts with OGE in July of 1994?

13            A     Not that I recall. It could have  
14     happened. I just don't recall them having made those  
15     comments.

16            Q     Are you aware of any other contacts with  
17     anyone in the White House counsel's office with OGE  
18     during July of 1994?

19            A     Not specifically, no. That wasn't an issue  
20     that I was interested in.

21            Q     You just said "not specifically." Do you  
22     have a general recollection?

1             A     That they had some contact? I assume they  
2     had a contact.

3             Q     I'm asking for your knowledge.

4             A     I have no knowledge of any specific contact  
5     or any general contact that they had with OGE.

6             MR. O'CALLAGHAN: I have no further  
7     questions. Thank you.

8             (Whereupon, at 1:00 p.m., the deposition  
9     was concluded.)

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ROBERT M. MC NAMARA, JR.

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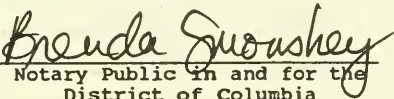
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I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 14, 1996



DEPONENT ROBERT M. MCNAMARA JR.

## ERRATA

| <u>PAGE</u> | <u>LINE</u> | <u>CHANGE FROM</u>                                       | <u>CHANGE TO</u> | <u>REASON</u>             |
|-------------|-------------|--|------------------|---------------------------|
| 11          | 18          | Case 1   | CASE 11          | (20)                      |
| 12          | 12-13       | Treasury Department Community Service Training Committee |                  |                           |
| 12          | 116         | after "Expenditure" add "at the Treasury Department"     |                  |                           |
| 12          | 19          | after "Report" add "and "and then"                       |                  |                           |
| 14          | 16          | "stop"   | "stop"           |                           |
| 18          | 20          | after "Interview" add "Support"                          |                  |                           |
| 33          | 4           | General  | General          |                           |
| 33          | 11          | take   | take             |                           |
| 41          | 1           | after "conclusion" add "with his staff"                  |                  |                           |
| 44          | 12          | Director   | Director         | 2000<br>1995<br>#1378     |
| 59          | 10          | "Morgan"   | Morgan           |                           |
| 61          | 7           | who  | in name          |                           |
| 68          | 16          | McNamara   | McNamara         |                           |
| 80          | 6           | the  | the              | McNamara<br>1995<br>#1378 |
| 98          | 19          | BEL  | BEL              |                           |
| 91          | 16          | attorney   | attorney         |                           |
| 93          | 22          | after "and"  | add "and"        |                           |
| 108         | 4           | OGC  | OGC              |                           |



DEPONENT Robert M. McNamara, Jr.

## ERRATA

| PAGE | LINE | CHANGE FROM         | CHANGE TO                            | REASON     |
|------|------|---------------------|--------------------------------------|------------|
| 11   | 18   | Carol               | Carroll                              | misspelled |
| 11   | 22   | want what           | want to know what clarification      |            |
| 12   | 2    | counsel             | Counsel                              | case       |
| 12   | 11   | general counsel     | General Counsel                      | case       |
| 12   | 12   | Treasury Department | Commodity Futures Trading Commission |            |
| 12   | 16   | Enforcement         | Enforcement at the                   | misquoted  |
|      |      |                     | Treasury Department                  |            |
| 15   | 4    | general counsel     | General Counsel                      | case       |
| 16   | 7    | Hamil               | Hamill                               | misspelled |
| 16   | 7    | H-a-m-i-l           | H-a-m-i-l-l                          | misspelled |
| 17   | 17   | assistant           | Assistant                            | case       |
| 17   | 18   | general counsel     | General Counsel                      | case       |
| 19   | 10   | office              | Office                               | case       |
| 21   | 2    | office              | Office                               | case       |
| 46   | 5    | discreet            | discrete                             | misspelled |
| 53   | 8    | counsel             | Counsel                              | case       |
| 59   | 2    | don't               | didn't                               | misquoted  |
| 59   | 10   | Mascato             | McNamara                             | misspelled |
| 62   | 12   | counsel             | Counsel                              | case       |
| 81   | 1    | counsel             | Counsel                              | case       |
| 88   | 19   | B&L                 | BNL                                  | misquoted  |
| 89   | 18   | accepted            | expected                             | misquoted  |
| 91   | 15   | assistant           | Assistant                            | case       |
| 91   | 16   | attorneys           | experience                           | misquoted  |
| 95   | 15   | hearings and as     | hearings. As I                       | misquoted  |
| 99   | 17   | meeting             | meeting that                         | misquoted  |
| 103  | 6    | inquiry of          | inquiry to                           | misquoted  |
| 112  | 8    | synopsis            | synopses                             | misquoted  |
| 127  | 15   | not been            | been                                 | misquoted  |
|      |      |                     |                                      |            |
|      |      |                     |                                      |            |
|      |      |                     |                                      |            |

**DEPOSITION OF JAMES G. THOMPSON, JR.  
IN RE: S. RES. 120**

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**TUESDAY, OCTOBER 24, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of JAMES G. THOMPSON, JR., called for examination pursuant to notice of deposition, at 10:20 a.m. in Room 640-A of the Hart Senate Office Building, before JULIE BAKER, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

MUNSELL ST. CLAIR, Esq.  
Resolution Trust Corporation  
1717 H. Street, NW  
Washington, DC 20434  
On behalf of Resolution Trust Corporation

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## WITNESS

## EXAMINATION

James G. Thompson, Jr.

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| by Mr. Ivey .....         | 104 |



## P R O C E E D I N G S

MR. BARTOLOMUCCI: Mr. Thompson, before we begin the questioning, there are certain preliminary matters I need to read into the record, and I understand that Mr. Sinclair has a short statement to make thereafter.

This deposition is being conducted pursuant to Senate Resolution 120, which establishes a Special Committee to investigate Whitewater Development Corporation and certain other related matters. The Special Committee is administered by the Senate Banking Committee. The matters covered by the resolution are those that we'll be talking about today.

This deposition is being conducted in advance of public hearings. You may or may not be called to testify at those hearings.

I'll be asking you questions under oath. If you don't understand a question, please let me know and I'll rephrase it. Tell me if you need a break, and we'll take one.

The stenographer will prepare a record of

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questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings, you will receive a letter from the committee advising you that you may come to the Senate to review the transcript of your deposition and make note of any corrections for transcription on an errata sheet.

If you are called to testify at a public hearing, you'll be permitted to have a copy of your deposition transcript four days in advance of the hearing. You may be represented by counsel, but I understand today you are not.

Any objections to the form of the question will be noted for the record. Objections may be based also upon privilege or scope. The committee chairman may rule on objections if you refuse to answer a question.

Would you go ahead and swear in the witness.

Whereupon,

JAMES G. THOMPSON, JR.

was called as a witness and, having first been duly

1 sworn, was examined and testified as follows:

2 MR. BARTOLOMUCCI: Mr. St. Clair, do you  
3 want to state your name for the record and tell us  
4 why you're here and the statement you have to make.

5 MR. ST. CLAIR: Thank you very much. I'm  
6 Muncell St. Clair. I represent the Resolution Trust  
7 Corporation.

8 Mr. Thompson and other witnesses are  
9 appearing because of the request of the Senate  
10 Special Committee for depositions of employees  
11 assigned to the RTC. The RTC is not waiving any  
12 applicable privileges as a result of Mr. Thompson or  
13 other employees appearing and answering questions at  
14 these depositions. Thank you.

15 EXAMINATION

16 BY MR. BARTOLOMUCCI:

17 Q Mr. Thompson, you're currently an employee  
18 of the Resolution Trust Corporation?

19 A Yes.

20 Q Would you state your title at the RTC.

21 A Vice president, field operations and  
22 accounting.

---

6

1 Q And that's in the Kansas City office?

2 A No. I've been reassigned to the Dallas  
3 office.

4 Q When did the reassignment occur?

5 A October 1st.

6 Q So as of the beginning of this month,  
7 you've been in Dallas?

8 A On initial temporary assignments, yes.

9 Q Did you have the same title that you have  
10 now in 1994?

11 A Yes.

12 Q How about 1993?

13 A Part of it.

14 Q Can you tell us what the change was?

15 A Yes. In August of '93, my title changed  
16 from deputy regional director, field operations and  
17 institutional -- or conservatorships and operations,  
18 excuse me, to vice president, field operations and  
19 accounting.

20 Q Were you also a deputy regional director in  
21 1992?

22 A Yes.

1 Q And during this whole period from 1992  
2 until October 1st of this year, you were in the  
3 Kansas City office?

4 A Yes.

5 Q Can you briefly describe for us what your  
6 duties and responsibilities were as deputy regional  
7 director?

8 A As deputy regional director, I had three  
9 primary areas of responsibility. The first one was  
10 conservatorship operations. Any S&L that the  
11 government intervened in while it was open and  
12 operating under government conservatorship, I was  
13 responsible for those in the Midwest part of the  
14 country.

15 Secondly, the institution sales, when we  
16 sold them on the marketplace to the highest bidder  
17 and resolved the deposits, insured deposits, that was  
18 my other function.

19 The third function was the investigations  
20 function, which was the pursuit of civil claims and  
21 investigation into other matters related to the  
22 causes of the failures of the S&Ls.

---

1 Q Would that include criminal matters, too?

2 A Yes, it would.

3 Q Can you give us a similar description of  
4 your duties and responsibilities as vice president?

5 A As vice president, the investigations  
6 function -- well, I became responsible for financial  
7 operations, both of the main consolidated,  
8 already-closed work, plus any field institutions,  
9 field S&Ls that were out there, pretty much the  
10 financial operations.

11 Q Did you have any continuing duties,  
12 responsibilities with respect to investigations?

13 A After August of 1993, only as a transfer  
14 liaison, bridge type role to my successor in that  
15 area and with some of the folks that I had worked  
16 with.

17 Q Who was your successor?

18 A Dennis Cavanaw.

19 Q So he took over your job after August '93  
20 or thereabouts?

21 A It was a realignment of functions, and that  
22 function went from me to him.

1 Q Did he have the title deputy regional  
2 director?

3 A No. He was called field office vice  
4 president.

5 Q So although he was a vice president, was he  
6 below you in the organizational chart?

7 A We were peered, separate divisions.

8 Q In that organizational chart, where would  
9 Julie Yanda and Richard Iorio be?

10 A Julie Yanda would be in the third division,  
11 which would be the legal division -- Julie, first.

12 And Julie would have been either subordinate to the  
13 regional counsel for Kansas City or the most senior  
14 professional liability attorney reporting straight to  
15 Washington. I'm not quite sure. I think they had a  
16 dotted-line relationship.

17 Richard Iorio, as deputy, would have been a  
18 direct report to me and as vice president, would have  
19 been a direct report to Mr. Cavanaw. I no longer  
20 would have had Richard reporting to me.

21 Q So Mr. Iorio reported directly to you, but  
22 Ms. Yanda did not?

---

10

1 A No.

2 Q Where does Jim Dudine fit in the chart with  
3 respect to the positions you held in Kansas City?

4 A Jim Dudine was responsible for the  
5 investigative program area out of Washington. He had  
6 have been like a specialist, if you will, at the  
7 management level out of Washington who I would have  
8 worked with and according to the policies and  
9 directives out of Washington, I would have worked  
10 with Jim Dudine to make sure that Richard and company  
11 in Kansas City were observing all those particular  
12 program area goals, objectives, functions.

13 Q Would Dudine have been above you in the  
14 organizational chart?

15 A I wouldn't have viewed it that way, but I  
16 would have viewed my role as reporting to Mr. Roelle,  
17 chief financial officer and senior vice president of  
18 institution, operations and sales and Dudine would  
19 have been one of a series of specialists underneath  
20 Roelle. In effect, yes, I would take direction from  
21 Jim, but if I had a problem with Jim Dudine, I would  
22 go to Mr. Roelle.

1 Q Are you speaking now about the time period  
2 when you were deputy regional director?

3 A When I was deputy, right. You're correct.

4 Q When did you first come to learn about the  
5 investigation into Madison Guaranty?

6 A Well, it was shortly after the publication  
7 of the news article. It was brought to my -- well,  
8 the first time it ever struck me in my mind was the  
9 news article. Up to then, it had been one of the  
10 S&Ls in our region of no particular note. So the  
11 first time it rung a bell with me was the date of  
12 that publication, that news article in The New York  
13 Times, I believe it was, by Mr. Hesch --

14 Q Could it be Mr. Gerth?

15 A Gerth, yes.

16 Q Could that be March '92?

17 A Yes, it would have been March 8th or so of  
18 '92.

19 Q And at some point a decision was made to  
20 launch or reinvigorate an investigation into Madison?

21 A I don't know whether I'd reinvigorate or  
22 whatever -- yes, we decided to take another look at

1 things down there, yes.

2 Q Did you make that decision, or were you  
3 part of it?

4 A I was certainly part of it. Others may  
5 have reached the same conclusion, but as supervisor  
6 to Richard, I had no problem with taking another look  
7 at things down there. So yes, I would have made the  
8 decision in the chain of command.

9 Q To bless the investigation of --

10 A To authorize some people going down there  
11 to take a look at it.

12 Q Apart from that, apart from saying go ahead  
13 and look into Madison, what sort of a role did you  
14 have with respect to the investigation?

15 A They would just brief me from time to time  
16 on what they were finding or what it looked like.

17 Q When the time came that the investigation  
18 progressed to the point that preparation of criminal  
19 referrals was being contemplated, were you consulted  
20 about that, about whether criminal referrals would be  
21 prepared?

22 A Yes.



1 Q And you agreed that they should be?

2 A If they had the facts, yes.

3 Q Were you consulted about the facts that  
4 formed the basis for referral C0004?

5 A I was furnished with a copy of it and read  
6 it and had no problem sending it on.

7 Q So you saw it after its preparation?

8 A Yes.

9 Q I want to show you a document -- no, I want  
10 to show that to you later.

11 I want to ask you similar questions about  
12 the nine additional Madison referrals. Can you tell  
13 me when there came to be discussions about continued  
14 investigations of Madison in 1993 after the first  
15 referral was prepared, when you came to -- how the  
16 decision was made to conduct further investigation?

17 A Well, I remember, one, before those  
18 additional referrals were sent on, Richard Iorio  
19 informed me that there were other matters they were  
20 looking into. I said fine, if you have something  
21 worth looking into, then do it.

22 Q What I'm getting from your comments is that

1 largely direct supervision of the investigation of  
2 the referrals was Iorio's responsibility, and you  
3 were just short of checking him? He would touch base  
4 with you with what he was doing?

5 A That's pretty fair. He directly supervised  
6 the investigators in the field and occasionally gave  
7 me a sense of what was going on, yes.

8 Q Both in 1992 and in '93, he showed you the  
9 criminal referrals before they were submitted to the  
10 Justice Department?

11 A Yes, I did see them.

12 Q And in both instances, you agreed they  
13 should be forwarded?

14 A I had no problem with it.

15 Q Now I want to show you a document which,  
16 for the record, is Bates numbered IN 0758. And  
17 because I've been apprised that Mr. Thompson's throat  
18 is somewhat hoarse, I'll read it into the record.  
19 It's an E-mail to James R. Dudine from James G.  
20 Thompson, subject: Madison Guaranty criminal  
21 referral. The date is Friday, May 14, 1993. The  
22 text of the E-mail reads "Jim, the referral from the

1 above institution on Mr. McDougal for kiting,  
2 et cetera and which may involve Whitewater  
3 Development Company (a company which Mr. McDougal and  
4 President Clinton and Hillary Rodham Clinton were  
5 partners) may be receiving some inquiry at the  
6 Justice Department. We recently made a routine  
7 status inquiry on the referral as we do in all  
8 referrals and are awaiting further word. I recommend  
9 that you advise senior management of this. Again,  
10 the Clintons are not the subject of the referral.  
11 They merely appear to be associates. JT."

12 I'm going to go ahead and show this to  
13 you. Do you remember sending that E-mail?

14 A Yes.

15 Q After you sent it, did you have any  
16 conversations with Mr. Dudine about the subject of  
17 the E-mail?

18 A Possibly.

19 Q Do you remember if he took your advice to  
20 advise senior management about the referrals?

21 A I believe he did.

22 Q Do you know who he spoke to?

---

16

1 A He would have spoken to Bill Roelle.

2 Q Is that who you meant by "senior  
3 management"?

4 A Yes.

5 Q And in the course of your work, that would  
6 have been clear to Mr. Dudine also, that you meant  
7 Bill Roelle?

8 A My opinion, yes.

9 Q Leaving the criminal referrals, did there  
10 come a time in which the Kansas City office became  
11 involved in an investigation of civil issues with  
12 respect to Madison?

13 A Yes, two occasions. One was the original  
14 one, and in between February and say, August,  
15 September of 1989 and '90 -- 1989, excuse me. And  
16 then the second time would have been after March of  
17 '92 when we took a second look into those matters.

18 Q What was the nature of the 1989 matter?

19 A It was the routine investigative work at  
20 failed S&Ls to find probable cause for civil  
21 recoveries, and as I recall, the findings were that  
22 there should be no civil actions pursued.

1 Q Do you remember who staffed that matter?

2 A Yes, the FDIC primarily staffed it for the  
3 bulk of the time. When the RTC was created and I got  
4 to Kansas City, my recollection is that that matter  
5 was not active. It was just a matter of filing the  
6 closeout paperwork.

7 Q You got to Kansas City after 1989?

8 A No. I got there in September of '89, right  
9 after FORREA.

10 Q So this first investigation that you're  
11 telling me about predated your arrival at Kansas  
12 City?

13 A My belief is that it did, even though the  
14 paperwork closing it out was not signed until after I  
15 was there. It was an inherited case.

16 Q Let's talk about the investigations in the  
17 1990s. You said that in March of 1992, the Kansas  
18 City office also became involved in Madison?

19 A Yes.

20 Q What precisely was being investigated at  
21 that point?

22 A Well, the article in The New York Times

1 made some disturbing claims, that quite frankly, from  
2 my perspective, made me wonder whether we didn't miss  
3 it the first time around. There were allegations, as  
4 I recall, of conflicts and relationships that we may  
5 or may not have known about back in '89.

6 In '89, Madison Guaranty would have been a  
7 totally different creature on the map. No one knew  
8 the elections of 1990 or who was who back then. Now,  
9 the newspapers had an interest in pointing out who  
10 was who, and some of the relationships pointed out in  
11 those articles were disturbing from whether or not we  
12 got an objective treatment, both from the law firms  
13 we hired, as well as the principals involved. So it  
14 was my opinion that we should take another look and  
15 make sure our conclusions the first time around were  
16 sustained.

17 And so in discussions with Richard Iorio,  
18 he said maybe we ought to send a person or two down  
19 there, and I said let's do it, and let's try to  
20 reaffirm our conclusions, or if there's something  
21 there, let's see where it goes.

22 Q And do you know who Richard Iorio sent down

1 there?

2 A I didn't ask for people by name.

3 Q What was Julie Yanda's involvement, if any,  
4 on the civil investigations?

5 A Discussed it with her at the time and told  
6 her my feeling we should take another look. And my  
7 recollection is that Julie said fine, and if there  
8 was anything that turned up, she would be happy to  
9 help out.

10 Q Did you also oversee an investigation into  
11 the decision to hire the Rose Law Firm in an  
12 accountant's malpractice suit in the '80s?

13 A I wanted all the matters looked into by our  
14 investigators, what went on before, what the  
15 newspaper was saying. This was under our watch. It  
16 was our part of the country, and I sure didn't want  
17 to be accused of having had something put right up in  
18 our faces and us not following up on it.

19 So I can't say specifically today that I  
20 told someone to investigate that particular  
21 relationship, but I could have, and I wanted the  
22 entire relationship looked at, yes. That was one of

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20

1 my concerns, yes.

2 Q I'm going to read and show you another  
3 document. This is numbered JY 0202. It's an E-mail  
4 from Julie F. Yanda to April A. Breslaw, subject re:  
5 Madison, date, July 20, 1993, and the text reads  
6 "Thanks for the offer. Just so you'll understand, I  
7 am NOT" -- "not" is in capital letters -- "the one  
8 behind this. JT has directed me to make sure we're  
9 ready if and when the criminal referrals generate  
10 additional inquiries on the civil side. I need  
11 whatever you have in storage. Please, please  
12 understand I am NOT" -- again, that's in capital  
13 letters -- "pushing the ship. I am really sorry  
14 about having to bother you with this. I just don't  
15 know where else to turn. Thanks. Let me know if I  
16 can do anything to take the burden of securing these  
17 files off your shoulders."

18 I'll go ahead and show that to you,  
19 Mr. Thompson. Do you remember what you did, if  
20 anything, in July of 1993 that may have lead to this  
21 exchange between Yanda and Breslaw?

22 A Yes. It was part of checking into that

1 relationship of the Rose Law Firm to Madison and  
2 Julie informed me that the records were in storage in  
3 some remote location, and I said well, I want to get  
4 them. We want to look at them. And so Julie had to  
5 contact April Breslaw, I believe, because April knew  
6 where they were, so April obviously -- and it  
7 generated this. But yes, I wanted the records.

8 Q So if I understand you, as part of the  
9 reinvestigation into Madison civil issues, which you  
10 agreed should happen, you had Yanda obtain prior  
11 files which were in the possession of April Breslaw?

12 A Or she knew where they were, yes.

13 Q Then that's what's going on in this E-mail?

14 A Yes. We didn't have access to them in  
15 Kansas City.

16 Q Do you remember in 1993, say the September,  
17 October period when the PLS section conducted a legal  
18 review of the second set of Madison criminal  
19 referrals?

20 A Yes, I remember that.

21 Q Do you remember how that came about?

22 A I probably have more impressions of how it

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22

1 came about rather than actual knowledge as to who  
2 directed it or who was the heavy. It was frankly a  
3 matter of the legal division exerting what they  
4 believed to be their authority to review criminal  
5 referrals, and there was some contention from the  
6 investigative staff as to whether this was a new  
7 exertion of that authority. But in any event, it was  
8 done, and I had no problem with it.

9 Q You weren't a part of the decision to have  
10 it performed?

11 A No, I wasn't.

12 Q And at the time, did you resist its being  
13 performed?

14 A Not at all. I had no problem with our  
15 attorneys looking at our work, none whatsoever.

16 Q During your office's investigation of the  
17 decision to retain the Rose Law Firm back in the '80s  
18 for the accountant's malpractice case, did you have  
19 any communications with April Breslaw with respect to  
20 your office's investigation?

21 A Yes. We spoke on the phone once, and I saw  
22 an E-mail or two that she sent, so yes, we had some



1 communications.

2 Q I'm going to show you another document in  
3 the hopes that it will refresh your memory somewhat.  
4 This is Bates numbered TH 1009. It's an E-mail from  
5 April Breslaw to James G. Thompson, Russell F.  
6 Kaufman, L. Richard Iorio and cc'd on the E-mail is  
7 Thomas F. Hindes, Julie Yanda and James R. Dudine.  
8 The subject is "Madison: retention of Rose Law  
9 Firm." The date is Wednesday, January 12, 1994.

10 I'm going to go ahead and show that to you,  
11 Mr. Thompson, and maybe you could take a minute to  
12 read that over. I think just the first page of it is  
13 relevant here.

14 Does this E-mail refresh your memory at all  
15 about the events involving Ms. Breslaw and the  
16 investigation of the decision to retain the Rose Law  
17 Firm?

18 A Yes.

19 Q What do you remember now?

20 A Well, April obviously didn't want -- didn't  
21 see a need to reopen the investigation into that  
22 subject matter. I disagreed.

1 Q Just so the record reflects what this  
2 E-mail is about, I'm going to read some of it and  
3 summarize some of it. It has five paragraphs.

4 The first paragraph says "it's my  
5 understanding that Kansas investigations has  
6 attempted to evaluate the decision to hire the Rose  
7 Law Firm to represent the government against Frost &  
8 Company, the former auditors of Madison Guaranty.  
9 It's my further understanding that this project was  
10 initiated in an effort to be prepared to respond to  
11 outside inquiries about this matter."

12 Then there are three more paragraphs in  
13 which she discusses her role in the decision to  
14 retain the Rose Firm. And then the last paragraph,  
15 the fifth one is just one sentence. It says "in  
16 light of all this, I suggest that investigations  
17 discontinue its inquiry into this matter." And  
18 that's basically what you've told me, that she was of  
19 the opinion that that investigation shouldn't  
20 proceed?

21 A Right.

22 Q Was it ordinary for a legal division

1 attorney in Washington to send an E-mail to you  
2 saying that you should discontinue a line of  
3 investigation that your people were pursuing?

4 A In fairness, it's not ordinary to reopen an  
5 investigation. So I think we're in an extraordinary  
6 situation to begin with. And so therefore, if she  
7 felt strongly that there was no cost benefit or issue  
8 here, I can understand where she's coming from. On  
9 this particular matter, though, we just respectfully  
10 disagreed, and the investigation continued.

11 Q Do you remember what your immediate  
12 reaction was upon receiving this E-mail?

13 A Well, yes. I thought she didn't know the  
14 perspective we were coming from. And I thought she  
15 might be taking it a little personally, and it wasn't  
16 meant personally.

17 Q Personally because it was her decision?

18 A She was the lead attorney on the case when  
19 it was FDIC and when it was RTC. So I thought she  
20 had a personal and professional involvement here that  
21 she felt strongly about.

22 Q Because her prior work was coming under

1 some review, or her decision was being reviewed?

2 A I suppose that's possible. Like I say, I  
3 think she had a strong feeling about it, let it be  
4 known, and duly noted, on we went.

5 Q I think you said a minute ago that you  
6 spoke with her. Was that before or after this  
7 E-mail?

8 A It would have been after this.

9 Q Did you know who April Breslaw was before  
10 you got this E-mail?

11 A We have never met face to face, but we have  
12 worked on cases over the phone and by mail over the  
13 years.

14 Q In that phone call you had with April --  
15 first of all, did you call her, or did she call you,  
16 do you remember that?

17 A Don't remember. It's possible I called  
18 her. I think I called her.

19 Q Do you remember if you apologized to her  
20 for the investigation or the work that it generated?

21 A Yes, I remember the call. I was kind of  
22 like trying to put her at ease, because she seemed to

1 be upset in her E-mail, and I didn't want her to be  
2 upset. So I told her it was nothing personal, and  
3 that we weren't trying to second-guess her. We were  
4 just trying to answer some questions out here, and I  
5 don't remember word for word, but it was along those  
6 lines. I wanted to make sure that she knew no one  
7 was out to get her, because that was not the point of  
8 what we were doing.

9 Q Would that work, the work into the decision  
10 to retain the Rose Firm have been under Iorio's  
11 supervision?

12 A Frankly -- it would have been. Yes, it  
13 would have been.

14 Q In your conversation with Ms. Breslaw, did  
15 you tell her that you had not intended for Iorio's  
16 group to try to evaluate law firm conflict issues?

17 A I don't recall. The call was basically to  
18 get April down a few notches because she was  
19 pretty -- it was my opinion that she was pretty  
20 energized that we were reopening this subject matter,  
21 and I wanted her to be calm, and we needed to work  
22 together on this.

1 Q But at the time, you thought it was  
2 appropriately being investigated, that it was  
3 appropriate to conduct that investigation?

4 A Yes. If there were relationships that  
5 existed that gave us a biased opinion which we relied  
6 upon to reach our conclusion, then those are facts  
7 that I wanted brought out.

8 Q Again, in that conversation with Breslaw,  
9 did you acknowledge that Kansas City investigators  
10 did not have training or experience with law firm  
11 conflict issues?

12 A Possibly. Yes, it's possible. I'm sure  
13 April would have maybe brought that up, but the point  
14 is that you never know what you're going to run into  
15 in an investigation, and I give our investigators a  
16 lot of credit for having common sense, and certainly  
17 any technical matters requiring an interpretation of  
18 the law or ethical determinations would have gone up  
19 the chain to the right authorities or to Justice to  
20 decide.

21 Q I take it that this --

22 A Basic culling of the facts can be done by

1 people who aren't as technical as a judge.

2 MR. BARTOLOMUCCI: Nothing further.

3 THE WITNESS: Okay.

4 EXAMINATION

5 BY MR. IVEY:

6 Q Good afternoon. Thanks for coming, even  
7 with the bad throat. I appreciate your time. I may  
8 be a little longer than Majority counsel was, but  
9 I'll assure you, I'll try to move through it as  
10 quickly as possible.

11 I guess there are a couple of general areas  
12 that I wanted to go through on a first cut that  
13 Majority counsel didn't go into, and I'd like to go  
14 back through some of the topics that were raised.

15 One is the administrative leave issue.

16 Were you in Kansas City at the time that Jean Lewis,  
17 Mr. Iorio and Mr. Ausen were placed on administrative  
18 leave?

19 A Yes.

20 Q Do you know who made the decision to place  
21 them on administrative leave?

22 A No. At the point that that happened, that

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1 function administratively had gone under Mr. Cavanaw.

2 Q So it would have been -- as I understand  
3 it, you and Mr. Cavanaw basically split the shop. He  
4 took some functions, you took the other functions,  
5 but the two of you ran the office together?

6 A Yes.

7 Q So this would have been a decision that  
8 would have come under his part of the operation?

9 A Yes.

10 Q At what point did you become aware that  
11 those three individuals had been placed on  
12 administrative leave?

13 A The day it happened.

14 Q How did you become aware of it?

15 A Probably spoke to Mr. Cavanaw. We spoke  
16 every day.

17 Q Do you know if the decision was made by  
18 Mr. Cavanaw or someone underneath him?

19 A It was not made by Mr. Cavanaw.

20 Q Was it somebody above him?

21 A To the best of my knowledge, it was  
22 somebody above him, yes.

1 Q Do you know who it was?

2 A No, I do not.

3 Q Why do you say it was somebody above him?

4 A Because Dennis had someone from Washington  
5 come out to the the Kansas City office to help  
6 implement the decision. I believe it was an  
7 attorney.

8 Q Do you know who it was?

9 A No, I do not. I don't recall.

10 Q What was your reaction when you learned  
11 about the administrative leave?

12 A Well, I was very surprised.

13 Q Did you learn any -- did you gather any  
14 information or get any more information about what  
15 had happened with the administrative leave issue?

16 A No. No one officially explained to me --  
17 you'd have to ask Mr. Cavanaw what he knew -- but to  
18 me why it was happening, what were the reasons, I was  
19 never briefed or given any information on it.

20 Q Did you ever speak to Ms. Lewis, Mr. Iorio  
21 or Mr. Ausen?

22 A Spoke to Mr. Iorio after he came back to

1 work, quite a while after he came back to work.

2 Q But never to Lewis or Ausen?

3 A Never.

4 Q Did you know what the allegations were  
5 against them?

6 A Only from what the newspapers said, and the  
7 newspapers said it was possible time and attendance,  
8 their expense reporting or ethical concerns. It was  
9 very vague and absolutely no details.

10 Q Were you aware that Ms. Lewis had gone to  
11 meet with Congressman Leach?

12 A No, I was not aware of it.

13 Q Were you aware of Congressman Leach's  
14 statement on the House floor?

15 A When Congressman Leach made the statement,  
16 certainly by then I was aware that she had met with  
17 Congressman Leach, but not contemporaneously. In  
18 other words, she had whatever meeting she had with  
19 Congressman or whomever. I only found out after it  
20 became a matter of public record, when the  
21 Congressman made the statement or when it hit the  
22 newspapers. I never heard about any of those



1 meetings internally.

2 Q You weren't aware that the Leach meeting  
3 was one of the allegations against Ms. Lewis with  
4 respect to the administrative leave?

5 A No, I was not aware -- to this day, I'm not  
6 aware of what any of the specific allegations are  
7 against any of the three.

8 Q How would administrative leave typically be  
9 handled in your office? I assume there would be some  
10 investigation connected with it.

11 A Normally, you would have some finding of  
12 probable cause that you're prepared to take an action  
13 on, but because of some time factor regarding either  
14 the bureaucratic time of the action or whatever,  
15 where for a bridge period you would recommend some  
16 administrative leave because of potential disruption  
17 having folks in the office place or obviously if  
18 there's a potential for danger. But usually, you  
19 have some basis -- you have a basis for the action.

20 Q And then would the RTC IG be told in these  
21 investigations typically or on occasion?

22 A On occasion, but most times, they don't get

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1 to that level of seriousness. Most times, they're  
2 administrative matters.

3 Q Are people sometimes given administrative  
4 leave for violations or offenses that don't result in  
5 termination?

6 A It's happened, but it's rare.

7 Q Normally, when you're on administrative  
8 leave, you're terminated?

9 A Usually it's a very serious matter. My  
10 experience is that yes, if you want to put someone on  
11 administrative leave, it's prior to the finalization  
12 of a recommendation for termination. Rarely is it  
13 something else, but there are exceptions to  
14 everything.

15 Q Did you ever see any of the memoranda with  
16 respect to the administrative leave issue that were  
17 generated by the RTC?

18 A No, I don't believe I ever saw any.

19 Q Those all would have gone through  
20 Mr. Cavanaw?

21 A Mr. Cavanaw. I mean, he may have shared  
22 the general contents with me, but it was his business

1 and his matter of -- he didn't give me copies or  
2 anything. We respected each other's privacy on  
3 matters like that.

4 Q Is it fair to say, then, that essentially  
5 with respect to the administrative leave issue, you  
6 didn't really come to know anything through direct  
7 knowledge, you had some things relayed to you perhaps  
8 by other people, perhaps Mr. Cavanaw?

9 A Never any direct knowledge. I was not in  
10 that chain of events.

11 Q And I guess it wouldn't be fair to say you  
12 didn't pay attention to it, but you felt it was  
13 Mr. Cavanaw's jurisdiction, and that you didn't want  
14 to encroach upon that?

15 A I paid attention to what was happening, but  
16 yes, it was his side of the house. And frankly, I  
17 made a point of staying away from the three  
18 principals involved, even though, for example,  
19 Mr. Iorio was a direct report to me, because it was  
20 obviously a very serious matter, and I wasn't going  
21 to get my hands in the middle of it at that delicate  
22 a stage. So it was my judgment to stay away.

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1 Q Let me ask you about confidentiality  
2 policies at RTC during that time. I want to hand you  
3 a document. Its Bates stamp is EK 5904, EK 5905, EK  
4 5906, and the top it's got "Policies and  
5 procedures." There's no date on it, which is  
6 something I'm hoping you can help me out with, and  
7 it's from Dudine to all investigations staff.

8 Do you recognize that? Have you seen that  
9 before?

10 A No, I don't recognize it.

11 Q When did the investigations function move  
12 from your jurisdiction to Mr. Cavanaw's jurisdiction?

13 A The effective date would have been  
14 August -- the official date was August of '93. Like  
15 I say, it transitioned shortly over those immediate  
16 days and months.

17 Q I'm hoping I've got a copy of this one that  
18 isn't marked up here, and it doesn't appear that I  
19 do. Maybe I should just read this to you. This  
20 doesn't have a Bates stamp number. This is part of  
21 an attachment to Congressional hearings, I believe,  
22 in 1994, the semiannual report before Congress with

1 respect to RTC's activities. This one is dated June  
2 17, 1993.

3 It's a memorandum "to all RTC  
4 investigations department heads, all investigations  
5 staff, all assistant general counsel, all litigation  
6 professional liability and complex litigation section  
7 chiefs, all litigation professional liability and  
8 litigation attorneys." It's from Dudine, Thomas  
9 Hindes, James Barker and Jerry Patchan, and the  
10 subject is "Criminal referrals." Number 1, it says  
11 "the purpose is to consolidate instructions and  
12 guidance on making criminal referrals to the U.S.  
13 Department of Justice and other agencies."

14 Do you know if during this period, 1993,  
15 there were any attempts to alter policies with  
16 respect to criminal referrals in an attempt to  
17 enhance uniformity at all?

18 A I wasn't aware of any.

19 Q Do you know if there were any policy  
20 changes -- while I'm reading one to you, do you know  
21 what generated this document?

22 A No, I do not.

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1 Q Were you aware of it?

2 A You know, at the time I don't think I was.  
3 I believe I'm aware of it now, but at the time I  
4 didn't recall it. In the summer of '93, I didn't  
5 recall it.

6 Q Was there something called a blue ribbon  
7 task force or something like that?

8 A Yes. In Kansas City, the investigators and  
9 the PLS attorneys worked together to -- and it was,  
10 frankly, a very successful effort -- to put together  
11 a manual of guidelines for joint operating  
12 procedures, to define the roles and responsibilities  
13 of different phases of an investigation, of the  
14 investigator, of the attorney and the client role, if  
15 you will, because investigators are giving attorneys  
16 information, attorneys are making recommendations,  
17 and the client has to decide what chances of success  
18 and how much money it's going to cost. It's a joint  
19 legal/business decision to go forward with a case.

20 So it was a task force, if you will, a  
21 special group of people that worked on putting  
22 together the ways we were going to work together

1 between legal and investigations.

2 Q Do you know when this task force concluded  
3 its business?

4 A There were large pieces of it, but it was  
5 done either early 1993, and a lot of it was done in  
6 1992.

7 Q What prompted the task force?

8 A Well, I'd like to think it was one of my  
9 ideas, but I've got to say that both Richard Iorio  
10 and Julie Yanda were very supportive of it. I didn't  
11 want to have any conflicts between the investigators  
12 and the attorneys on how we were going to get to a  
13 decision and who was going to do what. Historically,  
14 that had been one of the trouble spots. And so it  
15 was one of the things that I helped endorse with  
16 their support so that we could work very well  
17 together.

18 And quite frankly, I think it was a  
19 success, and I think that one of the examples of that  
20 was when the RTC reorganized, and there were some  
21 problems with different offices for PLS attorneys and  
22 the regular attorneys and the investigators. Kansas

1 City sailed through with flying colors on that  
2 score. In fact, there's a GAO report that actually  
3 praised that effort in Kansas City.

4 Q When was that reorganization done?

5 A That was the August '93 one.

6 Q Had it come to your attention that there  
7 was some conflict between investigators and matters  
8 on any particular types of matters?

9 A There were some conflicts on some cases, in  
10 things like that. That happens, but frankly, in the  
11 big picture of things, through this blue ribbon panel  
12 and others, and had managed to avoid the big office  
13 splitting issues. Although obviously, subsequent to  
14 August of '93, I think partly as a result of what  
15 we're talking about today, there were some  
16 differences of opinion that arose.

17 Q Well, let me -- I'll ask you specifically  
18 about that in a moment, but as far as general types  
19 of conflict, with respect to the way referrals were  
20 written, the way the contact was made or carried out  
21 with prosecutorial players after referrals had been  
22 sent out, were there those types of conflicts, or did

1 they tend to be case by case?

2 A There were occasional conflicts, yes.

3 There were occasional conflicts, yes.

4 Q I guess maybe I'm not being clear with my  
5 question.

6 A And I don't want to be evasive either. I  
7 could tell you lots of war stories.

8 Q I'm not after that. I'm trying to find out  
9 if there were themes, certain types of interactions  
10 that led to conflict repeatedly, that led you to  
11 think a task force might be appropriate. I mean, if  
12 that's not the case, then fine.

13 A The conflicts didn't generate the task  
14 force. The blue ribbon panel was generated, frankly,  
15 by my prior years of experience and frankly, the  
16 first attorney who was in charge of PLS in  
17 Washington -- his name escapes me -- but anyway, he  
18 basically took the position that the lawyers were  
19 going to do what they wanted to do when they wanted  
20 to do it and investigators were merely giving them  
21 grist for the mill.

22 And I agree with that from a litigation

1 support sense, but I disagreed with him over when it  
2 came time to make the decision, there's a client,  
3 then, that has to say okay, the investigators found  
4 this. Here's the probability of success in the  
5 laws. Here's how much it's going to cost. Here's  
6 how much we think we can recover, and then some type  
7 of legal/business decision has to be made.

8 The attorneys tend to want to make those  
9 decisions without the business side and there's a  
10 fundamental disagreement whether attorneys are  
11 qualified to do financial statement analysis, as to  
12 whether they know everything. I'll respect the law  
13 and I'll respect the years of experience they acquire  
14 in a certain field, but I think that there were  
15 things that the client role, if you will, brings to  
16 the table that provided good balance and -- checks  
17 and balance on the whole process.

18 So I wanted to have that issue be a  
19 nonissue in the Kansas City region by having the  
20 working relationships defined, so there were no  
21 incidents that led to the blue ribbon panel. It was  
22 a fear of having attorneys not responsive to the



1 business side, but it wasn't a fear based on an  
2 incident.

3 Q You wanted to nip it in the bud?

4 A We wanted to set it up beforehand, right.

5 Q So analysis prevention, I guess you could  
6 say?

7 A And bridge building so the attorneys didn't  
8 become an island, so the investigators didn't resent  
9 them, so the business side, myself, for example,  
10 didn't resent that people weren't getting along. It  
11 was something in my opinion that needed to be done.

12 Q You mentioned the "client" a moment ago.  
13 Who do you mean by that?

14 A There's delegations of authority from the  
15 chief executive officer on down to regional  
16 directors, then vice presidents, whatever. Titles  
17 change, but at various dollar levels, people can make  
18 the decision to proceed or not proceed with lawsuits,  
19 just like as attorneys, you know, somebody says sue  
20 them.

21 Well, after you do a little work, you say  
22 fine, but it's going to cost you X, do you still want

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1 to sue or here's my retainer. If the person doesn't  
2 want to pay the retainer, unless you want to do it on  
3 a contingency, those things have to be negotiated and  
4 it takes a certain amount of understanding that you  
5 win some and you lose some. And it's a good check  
6 and balance if that decision isn't left completely up  
7 to the legal division in my experience.

8 Q So by "client," it would be whoever has  
9 assigned a task to be completed?

10 A The business manager at the office or  
11 division or whatever level that has complimentary  
12 authority with the attorney to make the decisions to  
13 proceed with litigation involving certain dollar  
14 thresholds. I don't know if I'm saying this right.

15 Q Maybe if we can do it with names.

16 A Okay. Makes sense that way.

17 Q Would you have been a client?

18 A Up to certain dollar levels, yes, I would  
19 have played a client role.

20 Q So with respect to the investigations in  
21 the Kansas City office --

22 A I could sign off the closeout cases and I

1 could sign off to settle cases within certain dollar  
2 limits with the attorneys' concurrence, so I would  
3 play a client role. And there are people higher up  
4 the chain that would play client roles.

5 Q Particularly in civil litigation a  
6 resolution of some sort of dispute as to how much --  
7 I don't know, how much the claims could be settled  
8 for or how much the institution would be sold for, is  
9 that what you're referring to?

10 A Well, if we were going to sue a board of  
11 directors, there would be an authorization to sue  
12 memo prepared. I would be signing for the business  
13 side, and the suit would either be authorized or not,  
14 or -- most of those went up to Washington, though,  
15 because that was our policy.

16 But if they were going to settle a claim  
17 against a director, say, for \$500,000, the lawyers  
18 would recommend it. I would sign off for the  
19 business side accepting it, if I was satisfied that  
20 there was no interest in further litigation and no  
21 dollars left -- no unreasonable amount of dollars  
22 left on the table.

1 So that's the true client role. You  
2 represent me, I'll accept the settlement. You tell  
3 me if I'm satisfied with it, but I don't have to.  
4 I'm independent. It takes two to make that happen.

5 Q Okay. I think I follow you.

6 Had you heard of any complaints about the  
7 quality of referrals that were coming out of your  
8 office or --

9 A None.

10 Q -- or investigations? Were you in contact  
11 with prosecutors' offices, particularly the U.S.  
12 Attorney's office in Little Rock?

13 A Myself, no. I spoke with U.S. Attorneys'  
14 offices one time. I spoke with an assistant U.S.  
15 Attorney in Little Rock and that was the only  
16 Assistant U.S. Attorney I had occasion to speak to in  
17 my years there, but staff investigators or Richard  
18 Iorio would, from time to time, have contact with  
19 U.S. Attorneys' staffs.

20 Q So that would have been -- would you have  
21 dealt with contacts with main Justice?

22 A No.

1 Q So contacting prosecutors wasn't part of  
2 what you did?

3 A Wasn't part of my purview on any normal  
4 basis.

5 Q Let's go back to the June 17, 1993  
6 document. Paragraph 2 says "policy." "Whenever an  
7 investigator, attorney or contractor for RTC  
8 discovers suspected criminal activity, that person  
9 shall prepare a criminal referral using the standard  
10 interagency criminal referral form in accordance with  
11 filing instructions and the following guidelines.  
12 For purposes of making a referral, suspected criminal  
13 activity means there's a reasonable basis to believe  
14 that a crime has or may have been committed, i.e.,  
15 there's evidence of wrongdoing or factual basis for  
16 the belief (not merely a suspicion). Except in rare  
17 circumstances, criminal referrals shall be reviewed  
18 by RTC investigators and legal division criminal  
19 coordinators (RTC criminal coordinators before  
20 they're delivered to the U.S. Attorney and the FBI or  
21 other investigative agency)."

22 Now, legal division criminal coordinators,

1 are they part of PLS, or are they a separate entity?

2 A Part of regional PLS.

3 Q So I suppose when you were talking about  
4 the legal division earlier asserting its view that it  
5 had a right to review referrals before they were sent  
6 out of the office to prosecutors and the FBI, do you  
7 think that language I just read supports that view?

8 A Certainly.

9 Q Let me go to the next paragraph 3, handling  
10 of criminal referrals. "All referrals are sensitive  
11 and must be handled with appropriate confidentiality  
12 and care."

13 Is it your view that referrals and  
14 documents connected with them are sensitive material?

15 A Yes.

16 Q And that they should be kept confidential?

17 A Yes.

18 Q So you agree with the language I just read?

19 A Certainly.

20 Q Was that the policy throughout your time in  
21 Kansas City?

22 A Absolutely.

1 Q Now, how would confidential materials  
2 normally be disclosed to Congress when you were  
3 there?

4 A From the regional level, they would not be  
5 disclosed to Congress.

6 Q How would that process work?

7 A You'd have to ask the bosses in Washington.

8 Q So the Congressional request would go to  
9 Washington, to the best of your knowledge?

10 A On anything that sensitive, absolutely.

11 Q Would you ever authorize someone within  
12 your office in Kansas City to disclose information to  
13 Congress without sending it up through the chain?

14 A Absolutely not, no.

15 MR. BARTOLOMUCCI: Can you be clear about  
16 what information you're talking about? The criminal  
17 referral itself?

18 MR. IVEY: Criminal referrals.

19 THE WITNESS: Criminal referrals.

20 BY MR. IVEY:

21 Q I thought I had been, but sensitive or  
22 confidential information is what I'm talking about.

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1 A No, it would be strictly restricted  
2 information, only talked about internally as needed  
3 to our managers.

4 Q Were we on the same page there on your  
5 previous answers? Were you referring to sensitive  
6 and confidential information as well?

7 A Yes. Stuff that's private is private.

8 Q What about FOIA requests? Did your office  
9 receive FOIA requests?

10 A Sure.

11 Q What was the process for handling FOIA  
12 requests?

13 A They would all be referred to a FOIA  
14 officer.

15 Q You had one in Kansas City?

16 A Yes, we did.

17 Q Who was that?

18 A It was a lady, and I forget her name. It's  
19 been a while.

20 Q Did your investigators typically make calls  
21 to the Justice Department to discuss FOIA requests,  
22 what should be disclosed and when the information

1 should be disclosed?

2 A I am not aware of any, so my answer would  
3 be not that I know of.

4 Q Is that the way that you would have wanted  
5 it to happen?

6 A No. FOIA requests would go to the FOIA  
7 officer who would review the requests for the  
8 legality. There are certain restrictions, and  
9 there's lawyers that supported the FOIA officers, and  
10 if anything was deemed then legally releasable, the  
11 requests would get to the program area to gather the  
12 material up, and depending on the sensitivity of it,  
13 it would either be released by Washington or local.

14 Q So let's say we had an investigator call  
15 someone in the Justice Department and say we've  
16 gotten FOIA requests with respect to an S&L, an  
17 institution that we're handling. We've sent a  
18 referral to you about it. I want to know what to do  
19 about it or what you're going to do about it. Would  
20 you think that would be an appropriate inquiry by an  
21 investigator?

22 A Yes, because Justice isn't going to decide

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1 what to do with a FOIA request. It would be up to  
2 our attorneys and our management to decide whether or  
3 not we have a legal obligation to release it. If it  
4 was something that was that much in question, I would  
5 certainly think that our lawyers would consult with  
6 Justice Department attorneys, but rarely did anything  
7 ever escalate to that kind of level.

8 Q Why would an investigator make the call?  
9 Why would you think it would be appropriate for the  
10 investigator to make the call?

11 A Because the investigator is not qualified  
12 to reach a conclusion on what is legally releasable  
13 or not.

14 Q Maybe I misunderstood your answer. Do you  
15 think it would be appropriate or inappropriate for  
16 the investigator to make that call?

17 A I think it would be inappropriate.

18 Q What about inquiries generally to Justice  
19 Department or the FBI with respect to the status of  
20 referrals? Was there some sort of process or  
21 standard way of making those inquiries?

22 A No process or policy guideline that I'm



1 aware of. Usually the investigator who was working  
2 the referral, frankly, knew who they sent it to, knew  
3 the office they sent it to, and probably on some  
4 other matters knew an Assistant U.S. Attorney or  
5 whoever might be handling it, and would make contact  
6 to see what the status was. It was a nonadversarial  
7 type of relationship. It was -- and so it wasn't a  
8 question of -- well, you know what I'm saying.

9 It was like they'd be working on matters  
10 in, say, Oklahoma, and so they'd call up and say by  
11 the way, how is referral ABC doing? So there wasn't  
12 any set policy that you call every 90 days. They  
13 usually were able to keep track of the referrals in  
14 that manner.

15 Q There was no formal mechanism --

16 A None that I'm aware of.

17 Q -- to be notified of the status of the  
18 referrals?

19 A None that I'm aware of, and frankly, it  
20 varies between U.S. Attorneys offices around the  
21 country. Some issue written declinations, some  
22 verbal, different practices.

1 Q I forgot to ask you before I moved away  
2 from the disclosure of sensitive or confidential  
3 information. What would be the sanction for  
4 disclosure of part of a criminal referral, an entire  
5 criminal referral or private information connected  
6 to -- an exhibit connected to a criminal referral?

7 A You'd have to look at the specifics of the  
8 matter to see what and how and the impact of it, but  
9 it could be extremely serious. It could be -- it  
10 would be discipline -- it would be cause for  
11 disciplinary action. It very likely could include  
12 termination of the employee.

13 But again, if someone just released an  
14 exhibit that was not the shin bone connected to the  
15 knee bone, but just a puzzling piece of information,  
16 that may or may not have any disparate impact or  
17 harmful impact on somebody. I could possibly see  
18 circumstances where a reprimand or something might be  
19 in order, or it could be an accidental leak, someone  
20 who just very innocently put something in a release  
21 that was not supposed to be -- you'd have to look at  
22 the facts, but any kind of harmful release or

1 information that damaged the private citizen, that  
2 would be a very serious matter. That's not what  
3 we're supposed to do -- it's not what anyone is  
4 supposed to do.

5 Q Let's say that information was released to  
6 a member of Congress, who then went to the floor of  
7 the House of Representatives and said what that  
8 information was and in addition, released additional  
9 supporting documentation that included a criminal  
10 investigative chronology of events, internal  
11 memorandum from the failed institution that was being  
12 discussed --

13 MR. BARTOLOMUCCI: Glenn, I need to state  
14 here, although your question is being posed as a  
15 hypothetical, you've been flashing documents to  
16 Mr. Thompson in an apparent attempt to express that  
17 these things actually happened.

18 MR. IVEY: I'll be clear about it, if you'd  
19 like. We can mark the Leach exhibits as an exhibit  
20 here.

21 MR. BARTOLOMUCCI: I'm wondering whether  
22 you're asking a hypothetical question, or are you

---

1 asking about the Lewis/Leach incident itself?

2 MR. IVEY: I think I clearly said at the  
3 beginning it was a hypothetical question. I'll ask  
4 the witness.

5 BY MR. IVEY:

6 Q Was there any question in your mind whether  
7 it was a hypothetical question or not, and if there  
8 was, I'll be happy to clarify.

9 A To this point, we've been speaking  
10 generically.

11 Q Internal letters, memoranda within the RTC  
12 from the vice president to the CEO and individuals  
13 like that, would the release of that type of  
14 information, in your view, be a serious breach of the  
15 confidentiality policies that we just discussed a few  
16 moments ago?

17 A Potentially could be extremely serious.  
18 Again, you'd have to look at the specifics of the  
19 matter and find out what the facts were.  
20 Hypothetically, I guess, if someone thought that  
21 there was an impediment to them doing their jobs,  
22 there are various protections they might claim under

1 the law. And frankly, say a hypothetical release to  
2 a Senator or Congressman, the person doing the  
3 releasing might view that as releasing to someone  
4 who's on the same side of them, the side of the  
5 people, if you will.

6 Q So you mean kind of a whistle blower  
7 scenario?

8 A Yes, if someone claimed whistle blower.

9 Q That was going to be my next question.

10 A You're talking to the wrong guy.

11 (Pause.)

12 Q So you're not an expert in the whistle  
13 blower provisions, I understand?

14 A No.

15 Q I want to be clear about your last comment  
16 about an investigator feeling blocked and therefore,  
17 going to a member of Congress or perhaps the press to  
18 disclose information.

19 First of all, would you see a difference  
20 between an investigator feeling blocked in an  
21 investigation and going to the press as opposed to  
22 going to Congress?

1 A Absolutely.

2 Q What's the difference?

3 A Well, you'd like to think that Congress is  
4 also mindful of the laws that it passes and a member  
5 of Congress will do their best to abide by them,  
6 whereas the press has no such constraints to not  
7 publish information.

8 You know, you guys are lawyers. You can  
9 get into all this prior restraints stuff. If they  
10 have something good to go with, they're going to go  
11 with it and privacy, they're not responsible for  
12 that. Someone else gave it to them.

13 Q So we'll set the media aside.

14 A Right.

15 Q And let me pose this question. Would you  
16 feel that there could be a potential problem with  
17 allowing investigators to go to Congress in  
18 politically sensitive cases whenever they feel  
19 blocked in their investigation in some way?

20 A That's a real hard question to answer.  
21 You'd like to think that most staffs in any agency  
22 would feel free to work through their chain of

1 command, so I can't answer that one. That's hard to  
2 reason out when it's appropriate, when it's not.

3 How do I feel about it? I hope it doesn't  
4 happen too much. I hope the agencies do their jobs  
5 and work well so there's no need to specifically seek  
6 unusual Congressional assistance.

7 Q Let me ask you this: In your activities  
8 with respect to the Madison investigation, I take it  
9 you didn't do anything to block or impede your own  
10 agency's investigation of the Madison case?

11 A Absolutely not.

12 Q And I assume you're not aware of Mr. Iorio  
13 or Mr. Ausen doing anything to block the activities  
14 of the criminal investigators within your office?

15 A I'm not aware of anything they've done to  
16 obstruct or harm in any way either, no.

17 Q So at a minimum, would you think that it  
18 should have come up to you or Mr. Cavanaw before  
19 information was taken to a member of Congress? In  
20 other words, do you feel that there's any obligation  
21 to go up the chain at all before this extraordinary  
22 route is taken?

1 A Normally, I would. Again, I don't know  
2 what the reasons of any individual in this case might  
3 have been not to do that. I don't know.

4 Q But you're not aware of any efforts to  
5 impede or block the investigation within the Kansas  
6 City office? Is that fair to say?

7 A Absolutely. I'm not aware of any  
8 impediments to the investigation.

9 Q And would it be your thought that if there  
10 had been an effort to block it, it would have come to  
11 your attention?

12 A Well, if one had come to my attention, I  
13 would like to think that I would have tried to get  
14 through it, so I was not aware of any impediments in  
15 the investigation.

16 Q Do you know if investigations -- or  
17 investigators like Ms. Lewis viewed PLS as an  
18 impediment to their investigation?

19 A I don't know how she viewed it. She quite  
20 probably was typical in that there was a natural  
21 competitiveness for who was running the show at  
22 various points. That's what that blue ribbon panel

1 tried to avoid. It tried to delineate who was in  
2 charge of a certain step, but some people interpret  
3 things differently than others.

4 Some investigators felt it was their job to  
5 work with the U.S. Attorneys in letters that they  
6 write to the judges for presentencing  
7 recommendations, and they work with parole officers  
8 and things like that. Some offices, the attorneys  
9 would take the lead in that.

10 So there's a natural competitiveness, if  
11 you will, and some investigators didn't like  
12 attorneys telling them stuff that they felt they were  
13 clearly competent on, and on the other hand, there  
14 were some attorneys who didn't like investigators  
15 usurping a role they thought the attorney had.

16 Q I take it from the blue ribbon task, you  
17 thought it was important that the lawyers and  
18 investigators work together?

19 A Very important.

20 Q And you saw that sort of institutional  
21 tension not as a impediment per se but the nature of  
22 different people with different perspectives trying

1 to work together on same projects?

2 A We were trying to deinstitutionalize it,  
3 and you do get down to a few people.

4 Q Now, with respect to this policies and  
5 procedures memo from Dudine to investigations staff,  
6 I'd like to ask you to take a look at it, the second  
7 page, sections 4 and particularly 5, "Authorized  
8 transfers of information."

9 MR. BARTOLOMUCCI: Glenn, is this the EK  
10 5904 document he's reading from?

11 MR. IVEY: I believe so.

12 THE WITNESS: Okay.

13 BY MR. IVEY:

14 Q Now, just as a general matter, does this  
15 section, "Authorized transfers of information," does  
16 that seem consistent with what your understanding is  
17 of RTC policies?

18 A Yes.

19 Q And would it have been consistent with RTC  
20 policies in 1992 and 1993?

21 A Yes.

22 Q And 1994?



1 A Yes.

2 Q Now, I note here it talks about the  
3 Department of Justice or other appropriate law  
4 enforcement agencies, such as IRS or Secret Service.  
5 And it speaks of federal grand jury subpoenas. It  
6 also speaks about federal or state regulatory  
7 agencies disclosures during litigation. I assume  
8 that's discovery, perhaps Brady or Jencks type of  
9 information as well. But it makes no mention about  
10 Congress here.

11 Are you aware of any published RTC policies  
12 or procedures that would authorize the direct  
13 disclosure of confidential or sensitive information,  
14 such as a criminal referral to a member of Congress?

15 A No. I'm not aware of any policy like that.

16 Q With respect to the prioritization of  
17 investigations in 1992, how were they determined?  
18 Who decided what institutions should be targeted, in  
19 what order they should be targeted, and what were the  
20 criteria for figuring that out?

21 A Well, we didn't have a formal  
22 prioritization system, but if you look at one of the

1 goals of the blue ribbon procedures, it was to  
2 specify a generic time frame for how long it takes to  
3 complete -- first of all, we have to do all the  
4 S&Ls. Every time we walk into an S&L, we make a  
5 determination in each and every case whether there  
6 was any civil and/or potentially any criminal  
7 wrongdoing apparent that might cause us to take  
8 action.

9 Q And is it my understanding that the civil  
10 review was done before the criminal review was done?  
11 Is that correct?

12 A No, they're often concurrent. Sometimes in  
13 the course of the civil, the investigator might find  
14 that it's more of a criminal matter and change  
15 directions right then and there. So I view the  
16 reviews -- I viewed the reviews as concurrent. So  
17 we've got to do all the institutions.

18 What was happening was that we were always  
19 bucking up against the three-year statute of  
20 limitations before we had much of our preliminary  
21 work done, and this was causing a lot of the -- the  
22 prioritization was which ones was coming up for

1 statutes.

2 Q Because the criminal statute of limitations  
3 was 10 years, I believe?

4 A Mainly civil. Criminal was 10 years for  
5 banking offenses.

6 Q And civil was three?

7 A Three. So our priorities were set by the  
8 statute of limitations. What we tried to do was  
9 establish a time frame so the investigation would  
10 take 15 to 18 months from intervention so we would  
11 avoid bumping up against the back end and hopefully  
12 improve the quality of our case selection and  
13 recovery targets and our entire knowledge of the  
14 institution.

15 So that's what we were working for, but I'd  
16 have to say in '92 we were still primarily statute  
17 driven. And that carried through in '93 as well.

18 Q Did the amount of loss with respect to  
19 criminal investigations -- did the amount of loss  
20 have any influence on the priority, the way you set  
21 your priorities for investigations?

22 A With respect to criminal?

---

1 Q Yes.

2 A I'd have to say no, because criminal  
3 investigations to that point tended to be by-products  
4 of the civil investigation.

5 Q So if you found something in the civil  
6 investigation, then you'd --

7 A You referred it on.

8 Q -- refer it to the criminal.

9 Did the amount of loss have any influence  
10 on determining impacts for criminal investigations,  
11 along with your statute of limitations concerns?

12 A We clearly spent more resources in the  
13 larger institutions than the smaller ones.

14 Q And why was that?

15 A Because they were more complex, had more  
16 transaction volume and generally had the larger, more  
17 sophisticated transactions that required more  
18 research, bigger more diversified, geographically  
19 dispersed, all the reasons that would cause you to  
20 spend more time on them.

21 Q I assume that part of the reason or part of  
22 the impetus behind FORREA was a desire behind

1 Congress to recover as much from failed institutions  
2 as possible, particularly from professional types  
3 within the bank, directors, officers who may have  
4 been responsible for the failure. Is that your  
5 understanding as well?

6 A That was our charge.

7 Q So I suppose that would be another reason  
8 to target the larger institutions as well?

9 A Yes, very much so, and frankly, not waste  
10 time on money-losing cases, yes. And we had several  
11 steps we would go through to try to determine that.

12 Q And what were they?

13 A Well, there's the preliminary investigative  
14 report, would be one, which would state prima facie  
15 civil basis for pursuing matters and also identify  
16 initial recovery sources. And then there'd be more  
17 detailed procedures through administrative subpoenas  
18 where we would be able to inquire about targets'  
19 resources.

20 And I'm particularly proud of Kansas City's  
21 record in that arena, and Julie Yanda and I were  
22 strong advocates of early subpoena power. We at one

1 point had issued more subpoenas than the rest of the  
2 nation combined, and we were not the largest office.  
3 So we were very aggressive in ferreting out recovery  
4 sources early.

5 There was another step. We set up a  
6 separate group in Kansas City called the -- gosh, it  
7 had an acronym, and it was another idea that I'm  
8 proud of, but it did nothing but evaluate recovery  
9 sources and when settlement offers came in, the  
10 lawyers would get with this group, which would then  
11 take a good look at the money, aside from the legal  
12 committee. So we had several check points and steps  
13 to try to maximize recoveries.

14 Q Once cases were assigned to individual  
15 investigators, do you know if there was an effort to  
16 prioritize institutions at that stage?

17 A Yes, that was more department level once  
18 they had their case load. Again, even the  
19 investigators were statute driven. We were not,  
20 frankly, permitted to not pursue an institution  
21 because the statute expired. At least that was our  
22 view of things. We couldn't just say well, there's

1 more money in this one and this one is little, so  
2 let's let that statute run. Our view of our mission  
3 is we've got to do them all.

4 Q To the extent possible?

5 A Yes, to the extent possible and frankly in  
6 Kansas City, I don't think we missed a statute before  
7 making a determination.

8 Q Would you agree with this paragraph here?

9 "I have attempted to schedule the investigation so  
10 that if there is more than one association in a  
11 specific city, the investigations will be conducted  
12 back to back looking for evidence of common players.  
13 Other than that, I prioritize based on joint  
14 investigative efforts with the FBI and information  
15 offered by the civil investigators as to how 'dirty'  
16 any of their specific institutions appear to be."  
17 That sounds consistent with what you were saying.

18 A Sounds reasonable, yes.

19 Q Let me hand you this memorandum. This  
20 looks like a Bates stamp number 4594 and 4595.

21 MR. ST. CLAIR: Do you have any letters on  
22 that?

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1 MR. IVEY: No letters.

2 BY MR. IVEY:

3 Q It's to Clark Walton from Jean Brennan.  
4 Are you familiar with who Jean Brennan is?

5 A I'm not sure who Clark Walton is.

6 Q Dated December 11, 1991, "Referral  
7 schedule," and ask you to look at that list of  
8 institutions and tell me if any of those institutions  
9 look familiar to you.

10 A I don't think I ever saw this before until  
11 just now, so I wouldn't have any knowledge of that  
12 schedule.

13 Q I understand, because it's 1991 and  
14 apparently you came to the office --

15 A No, Clark Walton -- I remember now. I  
16 think he was in charge of investigations or in  
17 investigations in Tulsa in charge of the criminal  
18 side of the house under Richard Iorio who was in  
19 Tulsa at the time. The name rings a bell, but inside  
20 the department from Kansas City, we had a regional  
21 office then. I wouldn't have necessarily seen that  
22 or known what an investigator's schedule was.

1 Q It's not even addressed to you.

2 A Right.

3 Q And I don't recall, but I don't believe you  
4 said you were in the Tulsa office?

5 A No, I was never in Tulsa, other than to  
6 visit for official purposes.

7 Q My only question was with respect to this  
8 list, the Madison/Little Rock is third from the last  
9 here, and within the schedule of dates that coincide  
10 with it to the side, the reason for that ordering, I  
11 guess, is because it was the last of the group on  
12 this list to be investigated. And that's the only  
13 thing I was going to raise with you.

14 But you're not familiar with these types of  
15 lists being prepared by investigators?

16 A No.

17 Q But you did see Madison on this list, third  
18 from the bottom?

19 A Yes, I did.

20 Q Now, I don't recall what E-mail you were  
21 shown by Majority. I've got another one here from  
22 Julie Yanda to you with a copy to Richard Fischman.

1 It's dated March 9, 1992, which I believe was the day  
2 after The New York Times/Jeff Gerth article. And it  
3 lists a couple things here within the context of the  
4 letter. And apparently, this is information that was  
5 relayed from April Breslaw to Ms. Yanda.

6 But one, it says there's been a total  
7 closeout for a year. The only exception with the  
8 accounting malpractice case against Frost & Company  
9 was that the RTC settled in March 1991. And it also  
10 goes on to say this statute of limitations on this  
11 institution ran on March 2, 1992.

12 Was that information that you were aware of  
13 at the time you asked the investigation to be -- to  
14 review the civil investigation?

15 A Yes.

16 Q It lists five points. One says "Clinton  
17 was not a director, officer or borrower of this  
18 institution. 2. Clinton's 'friend' McDougal bought  
19 the institution in 1981 (two years after the  
20 Clinton/McDougal land deal was consummated).  
21 McDougal remained at the helm until the regulators  
22 forced him to leave in 1986. 3. The



1 Clinton/McDougal land deal was not financed at the  
2 institution. 4. McDougal was tried for bank fraud  
3 in connection with his actions at this institution in  
4 the spring of 1990. McDougal was acquitted.  
5 5. PLS/investigations recommended closeout on the  
6 D&O claim at this institution because there was no  
7 evidence of net worth or insurance that would justify  
8 continued pursuit of this claim."

9 Do you recall in your conversation with  
10 Julie Yanda if these points were discussed?

11 A Yes.

12 MR. BARTOLOMUCCI: Glenn, can you read the  
13 Bates number on that?

14 MR. IVEY: RI 193.

15 BY MR. IVEY:

16 Q But your view was that given the  
17 allegations that were raised in The New York Times  
18 letter, a fresh look at the investigation was  
19 necessary?

20 A All of that was apparently true and yes, I  
21 was aware of it. But if I recall, the news  
22 article -- the basic theme that ran through it was

1 not everything was as it seems. There were people  
2 who knew people who maybe should have told us they  
3 knew people a little better than they did in the  
4 past. And frankly, I thought there might be fertile  
5 grounds for a negligence -- potentially negligent --  
6 someone who didn't disclose a conflict and basically  
7 legal malpractice or something like that.

8 If we lost the case that we should have won  
9 because it was home cookin', I thought there was  
10 possible level of conflicts and undisclosed  
11 relationships that meant while all that may, in fact,  
12 happened, we didn't get the straight story the first  
13 time through, and while we might not have any civil  
14 grounds after these people and in fact, there may not  
15 be recovery sources against the original targets, we  
16 may have a cause of action from the people we hired  
17 to hold the public trust as a contractor and  
18 represent us.

19 Q Do you know if there were any civil  
20 recoveries from people connected with Madison?

21 A No, I don't believe there were. In fact,  
22 that was one of the purposes of the rereview, because

1 that determination of recovery sources was made long  
2 before -- well, it was made quite a while ago, and so  
3 one of my objectives in reopening it was to make  
4 doubly sure we did not leave money on the table as  
5 well.

6 Q After it was reopened and after you took a  
7 look at it again --

8 A To my knowledge, we didn't get any money  
9 out of it, and frankly, I was kind of happy, if you  
10 will, because I signed the original closeout memo, so  
11 I felt some responsibility, if I had signed it and it  
12 had turned out we had missed something, and I felt  
13 that it was an affirmation of the original decision,  
14 that there really was no recovery sources. And that  
15 was debatable, but there was no real great recovery  
16 sources there. I think we did a better job the  
17 second time around checking it.

18 Q But essentially, the conclusions were the  
19 same with respect to recovery?

20 A Was that the matter should have been closed  
21 out, yes.

22 Q Now, with respect to the criminal matter,

---

1 you said you had a chance to take a look at C0004,  
2 the 1992 referral with respect to matter?

3 A Yes.

4 Q My recollection is that it was a fairly  
5 lengthy document, and I don't know if you've had a  
6 chance to review it recently or not.

7 A I haven't seen it since October or whatever  
8 of '92.

9 Q So is it fair to say you don't especially  
10 recall the contents of what was in the document?

11 A Not word for word certainly.

12 Q Now, you said that you reviewed it, and you  
13 saw no problem with sending it on. And I wanted to  
14 know if you could -- I don't want to ask you for  
15 legalese, but I wanted to get a sense of what that  
16 meant. What's your standard for what goes and what  
17 doesn't go with respect to a referral?

18 A Well, it had a great deal of dates, times,  
19 places, check numbers, transaction tracing in it,  
20 again, not being lawyers and making legal conclusions  
21 on statutes, double jeopardy or if the transactions  
22 we say took place amount to kiting or other

1 violations of the code, it had an awful lot of  
2 specifics in it. And I think if you did a review of  
3 random referrals to the U.S. Attorney's office, you'd  
4 find that this one, in terms of specifics they had,  
5 would be very good.

6 I've seen an awful lot of referrals go on  
7 the standard form sheet of paper with little more  
8 than two sentences in there. This one went way  
9 beyond that, and so it was certainly up to, in my  
10 opinion, a reasonable standard of let's turn it over  
11 to Justice and let them chew on it and see if there's  
12 something that warrants further investigation.

13 Q At the time a referral goes out, I take it  
14 that -- let me put it this way. Apparently some  
15 investigators feel that they do a certain amount of  
16 the work and the prosecutors do a certain amount of  
17 the work or whoever their law enforcement partners  
18 are going to be at the time of prosecution or  
19 determination about prosecution -- is it your view  
20 that a referral should have evidence that addresses  
21 the essential elements of each offense that's checked  
22 off on the front page of the referral?

1 A My opinion is that it should either have  
2 the evidence in the narrative or document that such  
3 evidence is held for safekeeping in a safe deposit  
4 box or other location that could be checked. It  
5 shouldn't -- frankly, as you guys know, it shouldn't  
6 be hearsay or opinion. There should be some  
7 evidence.

8 Q Did you have a chance to read the nine  
9 referrals?

10 A I did see them.

11 Q Those were pretty lengthy, even without  
12 exhibits, a couple score of pages there. Am I right  
13 to assume that you didn't read each referral before  
14 it went out?

15 A No, I didn't.

16 Q Do you think it would be important to have  
17 factual issues, such as whether a target, let's say  
18 Lorraine McDougal, was alive or not at the time her  
19 name was being forwarded on to a U.S. Attorney's  
20 office as a target and a referral? Do you think  
21 that's the level of factual investigation that  
22 investigators should handle?

1 A That depends. Frankly, you would think so,  
2 but I could see where someone might make an  
3 assumption that someone is alive. You would assume  
4 that the principals are alive. If you're  
5 investigating that area and talking to people, unless  
6 someone told you oh, she died, you would presume that  
7 the targets are alive.

8 Q Did you see the PLS review of the nine  
9 referrals?

10 A Yes, I did.

11 Q I believe that issue I just mentioned was  
12 raised in the PLS review, but apparently, there were  
13 no changes in the nine referrals based on any of the  
14 issues raised in the PLS review. Were you aware of  
15 that?

16 A Yes, I believe so.

17 Q What's the logic of a PLS review of the  
18 referrals before they go out if the issues raised by  
19 the attorneys aren't incorporated or addressed in the  
20 referrals?

21 A Well, that's a good point. I think the  
22 procedure was being newly implemented in Kansas City

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1 and probably, in hindsight, could use refinement.  
2 But my view of it was that if the legal opinion on  
3 the referral went with the opinion to the U.S.  
4 Attorney, it would probably only help the U.S.  
5 Attorney in their judgments. They may or may not  
6 agree with our attorneys, but it would be another  
7 source of knowledge.

8 Q So ideally, the legal review might be  
9 incorporated in, but in the event that it's not, you  
10 think it still makes sense to send that review to the  
11 office of the prosecuting U.S. Attorney so that they  
12 can use it for whatever purposes they think are  
13 appropriate?

14 A I would have absolutely no problem with our  
15 lawyers commenting on any of our work product and  
16 sending it to anyone of relevance. I think if you're  
17 afraid of your own attorney's opinion, you have a  
18 fundamental problem.

19 Q Were you aware of the review and conclusion  
20 of the U.S. Attorney in Little Rock who first  
21 received C0004, which was sent in 1992?

22 A Are you referring to Ms. Casey, or who are

1 you referring to?

2 Q No. This would be Mr. Banks.

3 A I was informed by Mr. Iorio that they were  
4 going to not take any action. I believe it was in  
5 October when Mr. Iorio got that word.

6 Q October '92?

7 A '92. He informed me that nothing was going  
8 to happen. He had heard that.

9 Q And did he give you any reasons for why --  
10 let me ask it this way.

11 A He may have. I'm trying to remember.

12 Q Did he say what the basis of that statement  
13 was?

14 A I think he inquired or someone in his  
15 office inquired and he was relaying it to me, and I  
16 think -- I'm trying to remember because this is  
17 obviously important.

18 Q But it's been several years ago.

19 A Yes, it has.

20 Q So if your memory is sketchy --

21 A I don't want to say something I'm not  
22 exactly sure of, so let's leave it at that.

1 Q You're not sure?

2 A He told me that nothing was going to  
3 happen.

4 Q But I mean as far as the source of his  
5 information that nothing was going to happen.

6 A The source was the U.S. Attorney's office.

7 Q Oh, okay.

8 A That I know.

9 Q As far as reasons.

10 A The reasons is what I'm not sure of.  
11 That's where I get a little fuzzy. I don't want  
12 to -- I think I remember, but I don't want to  
13 speculate. I don't want to have a constructed  
14 memory.

15 Q Did he say if there had been any questions  
16 raised by the U.S. Attorneys about the allegations on  
17 the face of the referral?

18 A None. There was no discussion of questions  
19 from U.S. Attorneys on the face of the referral. Our  
20 conversation was relatively brief, just that nothing  
21 was going to happen until, frankly, after the  
22 election.



1 Q And do you recall why he said that?

2 A Well, that's where I'm getting into --

3 Q Speculation.

4 A I don't want to put two and two together to  
5 get five.

6 Q Were you aware of any conflicts between  
7 Jean Lewis and Julie Yanda?

8 A Well, not Julie. Jean Lewis had some  
9 conflicts with PLS.

10 Q Karen Carmichael?

11 A Karen Carmichael, for one.

12 Q Were you aware of the point at which  
13 Ms. Lewis and Karen Carmichael were removed from the  
14 Madison investigations?

15 A That I was not involved in. I think that  
16 was after the transfer of functions.

17 Q You knew it happened?

18 A Oh, yes.

19 Q Do you know why it happened?

20 A No, I don't.

21 Q Is this another example of not treading on  
22 Mr. Cavanaw's turf?

1 A Correct.

2 Q I think you said that you had discussed  
3 reopening the Madison civil investigation with Julie  
4 Yanda?

5 A Yes.

6 Q And she didn't have any trouble with that?

7 A No. She basically expressed that it was a  
8 case handled out of Washington. It wasn't one of the  
9 cases in her jurisdiction, if you will, because her  
10 jurisdiction locally came later after that matter was  
11 closed out. But she had no objection to it, but she  
12 stated that all the records and everything like that  
13 were in Washington and if we needed them, she'd help  
14 out whenever.

15 Q Did there ever come a time, in your view,  
16 when her desire to be cooperative changed?

17 A Julie Yanda and I always had a very good  
18 relationship, and I felt I got honest counsel from  
19 her, and I did not detect any change in her  
20 willingness to support anything that I ever wanted  
21 done, and sometimes occasionally, that would relate  
22 to support for getting Madison information. She

1 freely expressed her opinions to me, and I felt she  
2 was supportive.

3 Q And that was true throughout your time in  
4 Kansas City?

5 A Yes. Julie and I never had a conflict.

6 Q Had you ever heard any complaints about  
7 subpoena compliance by the RTC investigations staff  
8 from Justice Department?

9 A Yes, I heard some about that. Julie was  
10 particularly concerned because she felt she was  
11 frankly exposed legally on occasion, and to my  
12 knowledge, she asked for and got compliance with her  
13 wishes to control some subpoena responses because she  
14 felt that possibly there were some people who didn't  
15 understand the seriousness of a subpoena or the  
16 potential ramifications of inclusion or exclusion of  
17 materials that she, as an attorney, would understand.

18 Q Do you recall the cases or institutions  
19 that were connected with those problems?

20 A I would if there was anything that jogged  
21 my memory, but offhand, no, not right now.

22 Q So you can't recall if Madison was or not?

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1 A Madison was, but down the road. I don't  
2 know what capacity I was in -- there were Madison  
3 subpoenas through the Office of Special Counsel and  
4 different things like that that Julie was  
5 particularly concerned about, but I don't know if I  
6 was deputy anymore. I might have been vice  
7 president.

8 Q I don't want to ask you about Special  
9 Counsel subpoenas. Way before that. I'd be talking  
10 about subpoenas from the U.S. Attorney's office in  
11 Little Rock.

12 A You'd have to give me some hint because I  
13 might be able to help you out. I can't help you off  
14 the top of my head.

15 Q Is it fair to say you don't really recall  
16 specifically, then?

17 A I know Julie had some problems with  
18 subpoenas occasionally. We didn't have many  
19 problems, but Julie would get pretty adamant about  
20 compliance with subpoenas.

21 Q Can you recall a general time frame when  
22 this would have come up?

1 A No. It would have been throughout the  
2 relationship, but it was a very rare thing to have a  
3 subpoena problem. I'm sorry I can't help you any  
4 more than that.

5 Q No, I appreciate your effort. I'm almost  
6 done. Let me tie up a couple of loose ends. Then I  
7 think I'll be ready to wrap up.

8 You mentioned on several occasions that you  
9 didn't have problems with your attorneys looking at  
10 your work, work by the investigators, work generated  
11 in your office. I want you to just explain why you  
12 think that's a good idea.

13 A Well, fundamentally, we're working  
14 together. We're on the same team. Number two, in  
15 matters of law, that's why we have a legal division,  
16 to render such opinions. And if anything we're doing  
17 requires such judgment, then we're operating in the  
18 sunshine was my philosophy, so there's no -- that's  
19 the way it was done. There's no mysticism to it.

20 If you're working on referrals or working  
21 on legal cases or working on anything involving the  
22 law, somewhere in the process appropriate legal

1 counsel should be sought. And I as a business person  
2 did a pretty good job when those matters came to me.  
3 I would ask what is the legal opinion? Where do the  
4 lawyers stand on this? And I've also learned over my  
5 career, there's a big difference between a standup  
6 legal opinion and a written one. And it's much  
7 better to have the written one.

8 And so we operated on a reasonably informal  
9 basis like that. And there's no problems with that.  
10 It's the way it should be done. We're accountable  
11 for what we do, and if the lawyers are responsible  
12 for the legal opinions, then they should be willing  
13 to put them down in writing and be accountable for  
14 them.

15 And like I say, during my tenure, when  
16 investigations and PLS, I was very pleased with the  
17 relationship, very pleased and had nothing to hide  
18 from Julie. In fact, I thought Julie was quite an  
19 asset. But I also thought Richard Iorio was  
20 particularly qualified to do his job, and frankly was  
21 ahead of the pack on many of his ideas in the  
22 investigative realm. And I thought he was raising

1 our standards. So I was very fortunate I had two  
2 excellent people. And they got along when I was  
3 there.

4 Q Now, you mentioned having worked with  
5 Ms. Breslaw or at least communicated with her on the  
6 telephone on several occasions.

7 A Yes.

8 Q And in some instances, I guess you were  
9 referring to cases that predated the Madison matter?

10 A Yes.

11 Q Was your impression of Ms. Breslaw that she  
12 was a hard working, conscientious RTC employee?

13 A Sure.

14 Q Did you ever get the sense that she was  
15 trying to politicize any of the cases that you dealt  
16 with or the Madison matter?

17 A No.

18 MR. IVEY: I have nothing else at this  
19 time.

20 MR. BARTOLOMUCCI: I have some more  
21 questions, but I'd like to offer you a chance to take  
22 a break, if you need that. I have maybe 15 minutes

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1 more.

2 THE WITNESS: Might as well get it done.

3 EXAMINATION

4 BY MR. BARTOLOMUCCI:

5 Q We were talking earlier about the  
6 administrative leave issue. And if I heard you  
7 correctly, you said that ordinarily, someone is put  
8 on administrative leave when a drastic sanction such  
9 as termination is being contemplated; is that right?

10 A My experience is that usually, someone will  
11 give you evidence, or you'll have the evidence  
12 yourself, that somebody has violated a trust or rule  
13 of a fairly serious nature or has posed as a threat  
14 for one reason or another, but you have something in  
15 front of you and you make a decision as to whether  
16 that person needs to be removed.

17 In most cases, although I've seen  
18 exceptions, very few people come back from  
19 administrative leave. In most cases, if it warrants  
20 getting them out that day, before you can put them  
21 out, leave without pay or suspend them --

22 Q They're possibly not coming back?

1 A It's usually a serious enough matter that  
2 you're reasonably certain that the ultimate action  
3 you formally prepare will be sustained.

4 Q Now, Richard Iorio, Lee Ausen and Jean  
5 Lewis did come back from administrative leave, didn't  
6 they?

7 A Yes.

8 Q Do you remember how long they were gone?

9 A They were gone two or three weeks.

10 Q And I understand that Jean Lewis has left  
11 the RTC, but to the best of your knowledge, are  
12 Mr. Iorio and Mr. Ausen still on the job?

13 A Yes, Mr. Iorio is for sure. I believe  
14 Mr. Ausen is as well.

15 Q So is it safe to say all three of them were  
16 not terminated at some point subsequent to the  
17 placing of them on administrative leave?

18 A That's what it appears to me.

19 Q So in that respect, this whole incident  
20 looks fairly unusual?

21 A You're getting out of my league.

22 Q Okay. Fair enough. Turning to the issue

1 of the legal review performed by the legal division,  
2 people in Kansas City, Julie Yanda and Karen  
3 Carmichael -- and the legal division people in Kansas  
4 City are professional liability experts, are they  
5 not? That is, aren't they part of what's called the  
6 PLS section?

7 A Yes, that's their legal specialty.

8 Q So their responsibilities go to determining  
9 the liability of policies like lawyers and  
10 accountants and directors and officers, that sort of  
11 thing?

12 A Yes, and they do have the one position of  
13 criminal coordinator, which is an attorney position,  
14 too, specializing in the criminal domain.

15 Q They have one person who is --

16 A They had one in Kansas City.

17 Q So when they were conducting a legal review  
18 of the nine Madison referrals, the nine Madison  
19 criminal referrals, they were not working within  
20 their area of particular expertise?

21 A Well, again, if the criminal coordinator or  
22 attorney was the one who did it, and I believe she



1 was, that would have been her area of expertise. You  
2 guys can check that out.

3 Q Do you remember who the criminal  
4 coordinator was?

5 A Yes, Karen McCarthy.

6 Q Karen McCartney?

7 A Yes, I think that's her name.

8 MR. IVEY: Karen Carmichael.

9 THE WITNESS: Carmichael, excuse me. Karen  
10 Carmichael. I'm drawing blanks on names today. I  
11 apologize.

12 BY MR. BARTOLOMUCCI:

13 Q Prior to the PLS performance of that legal  
14 review, were you aware of such a review being  
15 performed on any other criminal referral?

16 A No, I'm not.

17 Q So that was the first time that it  
18 happened?

19 A To my knowledge, it was.

20 Q After the Madison referrals were reviewed,  
21 was there a consistent practice of reviewing new  
22 referrals by PLS before they were shipped out?

1 A I don't know. I was in my new title.

2 Q Glenn directed your attention earlier to a  
3 memo dated June 17, 1993, which I have at least Bates  
4 numbered TH 0703 -- I think it's the same document --  
5 and he drew your attention to a particular passage  
6 and asked whether you thought it supported the view  
7 that legal reviews should be performed of criminal  
8 referrals.

9 Do you remember receiving this memo in  
10 1993?

11 A No, I don't remember receiving it.

12 Q And you certainly were not involved in  
13 formulating the policy embodied in the memo?

14 A No, I wasn't.

15 Q And you were aware of the controversy in  
16 1993 between the PLS people and the investigations  
17 people about whether a legal review had to be  
18 performed and what sort of review that would entail?

19 A That controversy only flared up in this  
20 instance, the September instance. There had been no  
21 controversy prior to that.

22 Q Right. My only question was, you were

1 aware of it?

2 A Yes, I became aware of it, yes.

3 Q But at the time, did you take any steps to  
4 resolve the issue, to mediate between PLS --

5 A I was in a transitional state then.

6 Mr. Cavanaw was taking the function over, and the  
7 folks were handing over their duties, but I was still  
8 being consulted on a lot of things. My position on  
9 it would have been consistent with what I've said all  
10 along. Give it to the attorneys and let them have  
11 their say. Let's not fight over this. Let's give it  
12 to them. Let them do their thing.

13 Q Let's be clear here. That's sort of your  
14 view about what a reasonable thing to do is?

15 A But that's what I would have told the folks  
16 that called me. Don't waste your time fighting  
17 windmills. If the attorneys have a right to see  
18 these, give them to them.

19 Q If they have a right?

20 A To me, it's obvious they have a right.  
21 There's no reason not to consult with them on a  
22 criminal referral.

1 Q But your view is not based upon particular  
2 understanding --

3 A It wasn't based upon a directive because I  
4 don't remember getting that directive. We got so  
5 many thousands of directives, I couldn't tell you how  
6 many I got or how many I didn't get. So no, it was  
7 not based on any prior guideline. If someone  
8 asserted they had a right to do it, common sense  
9 would have been what would have drove me to my  
10 conclusion.

11 Q And then your belief would be that would be  
12 a reasonable and appropriate thing to do?

13 A Yes.

14 Q Is it also a very reasonable and  
15 appropriate thing for an investigator to keep track  
16 of and follow up on referrals that they have  
17 submitted to Justice Department people?

18 A For the most part, yes. There were so many  
19 referrals. Some of them were inherited from the  
20 institution and referred before we took over, if you  
21 will. They were done by examiners and detailed  
22 personnel. There were a great many referrals that

1 frankly, the investigators might not have had the  
2 same sense of ownership and followed up on. But the  
3 ones that they were personally involved in, they  
4 followed up on those.

5 Q And that would be a common practice?

6 A Sure.

7 Q When you were being questioned earlier  
8 about a hypothetical case of release of documents to  
9 a Congressman, and I broke in and sort of asked  
10 whether this is really so hypothetical, with respect  
11 to this particular incident involving Jean Lewis and  
12 Congressman Leach, has any of your prior testimony  
13 been intended to reflect a particular opinion about  
14 those set of facts?

15 A Could you clarify what you mean.

16 Q Today, has it been your attempt to express  
17 an opinion about the Jean Lewis and Representative  
18 Leach incident?

19 A No. I don't know enough about the  
20 circumstances of the information sharing and reasons  
21 Ms. Lewis might offer for taking such action. So,  
22 no.

1 Q You were also asked a series of questions  
2 about RTC confidentiality policies and whether you  
3 thought certain policies made sense. In your role at  
4 the Kansas City office, was the formulation of  
5 confidentiality policies ever part of your bailiwick?

6 A No. Those were pretty much prescribed in  
7 law and sent down from Washington.

8 Q And it was not any part of your duties to  
9 enforce?

10 A Oh, it would have been my job to enforce it  
11 if somebody transgressed, certainly.

12 Q So I take it, if the Lewis/Leach incident  
13 had occurred prior to your change of position, you  
14 may have become involved in it potentially?

15 A I don't know how that was handled, but on  
16 matters -- I was with the FDIC before RTC, and I  
17 believe the policies are similar, if not exact.  
18 Matters that are highly sensitive, such as involving  
19 elected officials and things like that and major  
20 litigation that involves sensitive people, those are  
21 not routinely decided at the field level.

22 And so if action were to be taken against

1 Ms. Lewis, it would have been in concert with the  
2 Washington office, to say here's the facts. Does she  
3 have whistle blower protection or not? What's the  
4 deal?

5 Q On the matter of the reopening of the  
6 Madison case with respect to civil issues in March of  
7 1992, with respect to that, what would you say to the  
8 suggestion that Madison was taken out of order?

9 A Nonsense. It was only taken out of order  
10 because information came out into national public  
11 domain that quite frankly warranted a look.

12 Q But you were going to look at all the  
13 institutions anyway on your list within your  
14 jurisdiction?

15 A We would have done our job and looked at  
16 everything.

17 Q And you got them all done? You looked at  
18 all the institutions?

19 A I assume so.

20 Q To your knowledge, did investigative work  
21 on other institutions suffer because of the work  
22 being done in Madison?

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1 A I don't have any knowledge of that.

2 Q Do you have any reason to believe that  
3 disproportionate resources, in terms of time,  
4 manpower, et cetera, were spent on Madison?

5 A Frankly, from my perspective, I believe  
6 when Mr. Iorio talked to me about reopening it, we  
7 were talking about sending one, maybe two people down  
8 there, low budget deal, with a mission to review the  
9 original findings and make sure that we were right or  
10 wrong and to look into the matters that were put out  
11 into the media and make sure we didn't have any  
12 conflicts with who we used to prosecute cases or  
13 relationships that might have affected our  
14 conclusions.

15 It was a one- or two-person low budget  
16 deal, end of story. It was not authorized any big  
17 budget. They weren't given any dollars to go hire  
18 third parties. This was not authorized with any  
19 special resources. There were subsequent  
20 investigations done by other divisions and other  
21 parties I had nothing to do with. That cost a little  
22 more money.

1 Q But also generated a number of criminal  
2 referrals?

3 A Certainly the special counsel's work has,  
4 yes.

5 Q In 1993 and 1994, did anyone, to your  
6 knowledge, even allege that disproportionate  
7 resources were being spent on Madison?

8 A I didn't hear it, but I can only tell  
9 you -- like I said, I sent one or two people down  
10 there and if that's disproportionate resources, then  
11 we wouldn't investigate any of the S&Ls. You've got  
12 to send one or two.

13 (Pause.)

14 Q I just have a few more questions. Mr. Ivey  
15 showed you an E-mail which was numbered RI 0193,  
16 which was an E-mail from Julie Yanda to you dated  
17 March 9, 1992, so it's in that time frame when you  
18 guys were talking about reopening Madison. And in  
19 the E-mail, Ms. Yanda relays some information which  
20 she had acquired from Ms. Breslaw, the attorney who  
21 had handled Madison previously.

22 And one of the points, apparently, that was

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1 relayed was that the statute of limitations had run  
2 on some civil claims. Isn't it true that the statute  
3 of limitations was subsequently extended on civil  
4 claims, that that would have been applicable to  
5 Madison?

6 A Yes.

7 Q Do you remember when that happened?

8 A Yes. It was right around that February, I  
9 think, of '93, was it -- or it was -- February of '92  
10 maybe. It was at a very propitious time, I remember,  
11 because the corporation was going to have to make a  
12 decision as to whether or not there was anything to  
13 go on or not.

14 Q It was right around the time --

15 A The statute was going to run, and it was  
16 just prior to that statute running, if my memory is  
17 right. My memory could be a little faulty.

18 Q My question is, the statute was extended  
19 about the time that you decided to take a second look  
20 at Madison?

21 A Yes, it was.

22 Q Do you know if it was before or after?



1 A I believe it was just before the statute  
2 would have run. I believe so.

3 Q Before -- I take it the statute didn't  
4 suddenly burst on to the scene -- was it in the air  
5 for a while that this was going to happen?

6 A In the legislation, sure.

7 Q Did you have a sense for some time that  
8 this was going to happen, that the statute would be  
9 extended?

10 A I personally didn't have a feel for what  
11 Congress would do.

12 Q I think you also said earlier that part of  
13 the reason that the running of the statute of  
14 limitations was not so important because you might be  
15 able to go after some of the contractors that were  
16 hired?

17 A Specifically, I had real concerns as to  
18 whether the Rose Law Firm was the right firm to use  
19 for that institution and possibly others.

20 Q And I'm correct when I say it was April  
21 Breslaw that hired the Rose Law Firm?

22 A I don't know that. She can speak to that.

1 I don't know who hired her.

2 Q But if it's the case that that was April  
3 Breslaw, then this E-mail advising against another  
4 look at Madison and hiring of Madison contractors  
5 would have been by the same person who made the  
6 decision to hire?

7 A Correct.

8 MR. BARTOLOMUCCI: That's all I have.

9 EXAMINATION

10 BY MR. IVEY:

11 Q Very quickly, I guess you were asked about  
12 sort of a commitment of resources type of question.  
13 My understanding was that the investigative team on  
14 Madison for some period of time constituted four of  
15 the five criminal investigators in Kansas City. Were  
16 you aware of that?

17 A No, I was never aware of that.

18 Q My understanding also was that Madison was  
19 the only investigation in which investigators were  
20 teamed up in that way, criminal investigators, and  
21 certainly the only case in which four of the five  
22 were put together?

1       A    I was never aware of any of that.

2       Q    Do you know what amount of time Ms. Lewis  
3 committed to investigating Madison Guaranty?

4       A    It appears to me that from October, when  
5 the first referral was completed, whatever time it  
6 took to complete that referral and from that point  
7 on, that she spent the bulk of her time on Madison.  
8 It would certainly appear to me that way.

9       Q    Do you know if she spent time on Madison  
10 even after she had been removed from --

11       A    That I don't know.

12       Q    That was after your watch?

13       A    I don't know.

14       Q    I didn't mean after your watch. I mean  
15 after Mr. Cavanaw took over.

16       A    Yes, and I don't know.

17       MR. IVEY: No further questions.

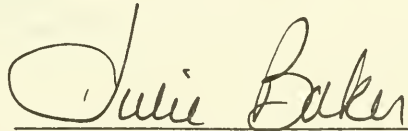
18       (Whereupon, at 4:52 p.m., the deposition  
19 was concluded.)  
20  
21  
22

-----  
JAMES G. THOMPSON, JR.

CERTIFICATE OF NOTARY PUBLIC & REPORTER

106

I, JULIE BAKER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

A handwritten signature in cursive script that reads "Julie Baker". The signature is written in dark ink and is positioned above a horizontal line.

Notary Public in and for the  
District of Columbia

My Commission Expires      SEPTEMBER 30, 1997

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**DEPOSITION OF KAREN CARMICHAEL  
IN RE: S. RES. 120**

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**WEDNESDAY, OCTOBER 25, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of KAREN CARMICHAEL, called for examination pursuant to notice of deposition, at 3:30 p.m. in Room 124 of the Dirksen Senate Office Building, before BRENDA M. SMONSKEY, a Notary Public within and for the District of Columbia, when were present:

VIET D. DINH, Esq.  
Majority Associate Special Counsel  
ANDREW M. SCHAUER, Esq.  
Minority Assistant Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

MR. ENDLER



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## WITNESS

## EXAMINATION

**Karen Carmichael**

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## P R O C E E D I N G S

MR. DINH: Good afternoon. As I told you before, my name is Viet Dinh. I am with the Majority side here at the Special Committee to investigate Whitewater Development Corporation and related matters.

As you may know, this deposition is conducted pursuant to Senate Resolution 120. The resolution establishes the Special Committee to be administered by the Senate Banking Committee to conduct an investigation into Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management services, the Arkansas Development Finance Authority and other related matters.

Section 1(b)(2)(a) of Resolution 120 authorizes investigation and public hearings into whether any person has improperly handled confidential Resolution Trust Corporation information regarding Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

Section 1(b)(2)(b) of Resolution 120 --

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4

MR. ENDLER: Can I jump in? I don't think we or the witness questions your right to ask her questions today. I don't know if you can just in an attempt to move things along, we can dispense with all the background.

MR. DINH: We can certainly do that. I just wanted to finish this paragraph in order to advise the witness of the matters she will be testifying to.

As I was saying, section 1(b)(2)(b) of Resolution 120 authorizes investigation and public hearings into whether the White House has engaged in improper contacts with any other agency with regard to confidential RTC information relating to Madison and Whitewater.

And finally section 1(b)(2)(d) of Resolution 120 authorizes investigation and public hearings into whether RTC employees have been improperly importuned, prevented, restrained or deterred in conducting investigations relating to Madison and Whitewater. These subjects will be the focus of today's deposition.

1 I should advise you that this deposition is  
2 being conducted in advance of public hearings to be  
3 held sometime in November. We have not decided who  
4 we will call as witnesses during those public  
5 hearings, though we will advise you in advance if we  
6 do intend to call you as a witness in those public  
7 hearings.

8 This deposition will be treated as  
9 committee confidential; that is, the transcript of  
10 this deposition, until the commencement of those  
11 hearings. At that time, these transcripts may be  
12 made public in whole or in part.

13 Prior to the hearing, you will receive a  
14 letter from the committee telling you that you or  
15 your counsel may come to the Senate to review the  
16 transcript and make any notes of any errors on an  
17 errata sheet. It is for the limited purpose of  
18 review and correction only and not to be disclosed to  
19 any other person besides yourself and counsel.

20 If you are called to testify, we will  
21 provide you with a deposition transcript four days in  
22 advance, for the limited purpose of preparing you for

1 your public testimony.

2 You may be represented by counsel, and as I  
3 see, Mr. Michael Endler is here, counsel with the  
4 Resolution Trust Corporation. Mr. Endler is aware  
5 objections to the form of the question will be noted  
6 for the record and objections as to privilege he can  
7 instruct you not to answer. Those are the grounds  
8 upon which he can instruct you not to answer.

9 I should advise that the committee chairman  
10 ultimately will decide those questions as to  
11 privilege and scope and rule on the objections where  
12 the witness refuses to answer a question.

13 Swear the witness, please.  
14 Whereupon,

15 KAREN CARMICHAEL  
16 was called as a witness and, having first been duly  
17 sworn, was examined and testified as follows:

18 EXAMINATION

19 BY MR. DINH:

20 Q State your name.

21 A Karen Carmichael.

1  
2  
3  
4 Q Can you give us your office phone  
5 numbers.

6 A My office  
7 number is 214-443-2227.

8 Q Since you have had notice of this  
9 deposition, have you had any conversations with  
10 anyone other than your attorney or family members  
11 about the substance or subject matter about which you  
12 are about to testify?

13 A No, I have not.

14 Q Have you been interviewed or questioned  
15 under oath by any investigative agency about the  
16 substance or subject matter that you have been asked  
17 to testify about?

18 A Yes, I have.

19 Q Who was that?

20 A Special counsel, the Independent Counsel.

21 Q This would be the Special Counsel,  
22 Mr. Fiske and the Independent Counsel is Mr. Starr?

1 A Mr. Fiske.

2 Q Were you requested by Mr. Starr?

3 A No, I was not. They did make a phone call  
4 to me and asked if I had anything to add and I said  
5 no.

6 Q When was your interview by Mr. Fiske?

7 A May of 1994.

8 Q Was it an interview rather than a  
9 deposition?

10 A It was an interview.

11 Q Was a court reporter there?

12 A No.

13 Q Was your attorney present?

14 A No.

15 Q Did anybody take notes of the interview?

16 A Yes.

17 Q I take it Mr. Fiske's counsel took notes of  
18 the interview?

19 A The FBI agents.

20 Q The FBI agents questioned on behalf of  
21 Mr. Fiske?

22 A Yes.

1 Q Let me ask you more generally about your  
2 job. Can you state for us who you work for.

3 A I work for the Resolution Trust  
4 Corporation, professional liability section.

5 Q What is your position?

6 A I am a senior attorney.

7 Q Since when have you held that position?

8 A April of 1992.

9 Q You have been -- let me back up. Are you  
10 based in -- what office are you based?

11 A I'm in the Dallas office.

12 Q Of the Resolution Trust Corporation?

13 A Yes.

14 Q Have you ever worked in the Kansas City  
15 office?

16 A Yes, I have.

17 Q When was the last time you worked in the  
18 Kansas City office?

19 A My last day was April 1, 1994.

20 Q Did you start at the Kansas City office in  
21 1992 until April 1, 1994?

22 A Yes.

---

10

1 Q Ever since -- in all relevant times since  
2 April 1992 until the present you have been a senior  
3 attorney with the RTC?

4 A Yes, I have.

5 Q Can you tell me what you did before joining  
6 the RTC? Actually, what did you do before April  
7 1992?

8 A I also worked for the RTC. I was a  
9 commercial attorney in Tulsa, Oklahoma.

10 Q How long were you at that position?

11 A From February 26th until April of 1992.

12 Q What was the reason for your transfer to  
13 Kansas City in April 1992?

14 A They closed the office.

15 Q And you were promoted from commercial  
16 attorney to senior attorney in April 1992?

17 A I was hired as a professional liability  
18 attorney, which came with the title of senior  
19 attorney, in April of '92. They were starting the  
20 office in Tulsa, and then I started commuting to  
21 Kansas City on approximately May 31st of '92, one  
22 week after they appointed me as professional



1 liability attorney. And then they announced they  
2 were shutting the office.

3 Q In Tulsa?

4 A Yes.

5 Q Subsequently you transferred to the Kansas  
6 City office?

7 A Yes.

8 Q Was that in May 1992 then or was that in  
9 April 1992 that you moved to Kansas?

10 A I started reporting officially --  
11 physically I started commuting to Kansas City in May  
12 of '92. Officially I started working under the  
13 Kansas City PLS umbrella in April of '92.

14 Q And what did you do before February 26,  
15 1992?

16 A I was the commercial staff attorney.

17 Q I'm sorry. How long were you at that  
18 position?

19 A For two years.

20 Q Was that the first time you joined the RTC?

21 A Yes, it was.

22 Q What did you do before then?

1 A Immediately before then, I had my own  
2 practice, and before that I worked for a savings and  
3 loan from 1985 until 1988.

4 Q What did you do for the savings and loan?

5 A I was a commercial real estate attorney.

6 Q I take it then you are an attorney?

7 A Yes, I am.

8 Q Can you give us a little bit of background  
9 as to your educational background.

10 A I graduated from Oklahoma State University  
11 in 1980. I graduated -- I did my master's work at  
12 Oklahoma State and finished that in July of 1981,  
13 started law school two weeks later and finished law  
14 school in 1985.

15 Q What did you do your master's work in?

16 A Communication.

17 Q That was also at Oklahoma State?

18 A Yes.

19 Q You also went to law school at Oklahoma  
20 State?

21 A No. University of Tulsa.

22 Q Moving to your position in Kansas City

1 starting in April of 1992, I take it, to April 1 of  
2 1994?

3 A Uh-huh.

4 Q Were there any subordinates under you? Did  
5 you supervise anybody?

6 A My paralegal and my secretary. I also was  
7 the criminal coordinator for the Tulsa office. So I  
8 worked with various divisions, not just legal.

9 Q Who did you report to?

10 A David Holland.

11 Q What was his title?

12 A Managing attorney.

13 Q Who does he report to?

14 A It depended. Either Dallas or Kansas  
15 City. We were transferred -- the Tulsa office  
16 reported to various people. They switched it  
17 around. They were still --

18 Q But in Kansas City, who did David Holland  
19 report to?

20 A I don't recall.

21 Q Can you tell me whether Ms. Julie Yanda was  
22 one of your colleagues at the Kansas City office?

1 A Yes, she was.

2 Q Can you tell me what her position was?

3 A She was my section chief.

4 Q Section chief of the professional liability  
5 section?

6 A Yes.

7 Q Was she Mr. Holland's supervisor?

8 A No. She was regional attorney for the  
9 Kansas City region. As regional counsel professional  
10 liability section, she was over the professional  
11 liability sections of the Chicago, Eagan, Tulsa,  
12 Kansas City field office and Baton Rouge, Louisiana  
13 offices. And they shrunk all of those offices into  
14 one supersite in Kansas City, and that's when I moved  
15 up to Kansas City. And there were seven attorneys  
16 who took care of all the work that were in the  
17 previous field offices.

18 Q Mr. Holland was one of these?

19 A No, he was not.

20 Q Where was Mr. Holland based?

21 A When I was in Tulsa, that was a different  
22 regime. That was prior to being a professional

1 liability attorney.

2 Q Did you report to Mr. Holland at all while  
3 you were under the professional liability section?

4 A No, I didn't.

5 Q So, your supervisor changed from being  
6 Mr. Holland to Ms. Julie Yanda?

7 A No. Bill Small was brought in as my  
8 supervisor for six weeks.

9 Q And then after that, Ms. Julie Yanda?

10 A Yes. Actually she was over Bill Small.  
11 She was regional counsel and he was the section chief  
12 in Tulsa. Then all those positions were changed and  
13 she became section chief of the supersite.

14 Q I just wanted to establish the reporting  
15 hierarchy. I appreciate your patience.

16 A As I understand it, it is Ms. Julie Yanda  
17 and then to you?

18 A When I was in Kansas City, yes.

19 Q What was the nature of your  
20 responsibilities as a senior attorney in the  
21 professional liability section?

22 A My duties entailed investigating failed

1 savings and loans, the professional liability claims  
2 that emanated from the failed savings and loans,  
3 which included former officers and directors of those  
4 savings and loans, attorneys, accountants, securities  
5 and commodities, appraisers and other professionals.

6 Q You started to answer with the word  
7 "investigating." Do you do the actual field  
8 investigations?

9 A Well, I am responsible for them.

10 Q What do you mean by "responsible"?

11 A It is my investigation. Those who work for  
12 me, whether it be outside fee counsel or the  
13 investigator, gathers the information. I do the  
14 legal analysis as to whether or not we should move  
15 forward with the suit and then file it and then once  
16 we file, then we proceed with litigating it.

17 Q So, you have people whom you supervise,  
18 although not on a direct day-to-day basis, but whose  
19 work you supervise in the sense of you coordinate  
20 their work and you make decisions as to whether that  
21 work is sufficient to go forward in a civil suit?

22 A Yes. They provide information. All my fee

1 counsel that I hire, the investigators work, the  
2 documents brought in, evaluated, determined whether  
3 or not to move forward.

4 Once I have decided whether or not I  
5 believe there is sufficient evidence to file a claim,  
6 then I draft an authority memo, and then I send it up  
7 the chain of command to obtain that authority, which  
8 was usually Washington, D.C.

9 Q You said that among these people whose work  
10 you coordinate or funnel or oversee are fee counsel  
11 and investigators?

12 A Yes.

13 Q And these investigators are based in the  
14 Kansas City office?

15 A Yes. When I was in Kansas City, yes.

16 Q Yes, for all relevant time now I will limit  
17 my questions to the Kansas City office.

18 A For nine months of the year, no, they were  
19 not solely in Kansas City. Many of them were also in  
20 Chicago.

21 Q And these are investigators employed by the  
22 RTC?

1 A Yes.

2 Q They are in what is called an  
3 investigations unit?

4 A Yes.

5 Q Has this reporting relationship existed at  
6 all times since you have been at the RTC since April  
7 or May of 1992 in Kansas City?

8 A Explain to me what you mean "reporting  
9 relationship."

10 Q As I understand it, the professional  
11 liabilities section, which you are a part of, and  
12 senior attorneys therein supervise the work of the  
13 investigators and therefore have some sort of  
14 oversight authority over the investigations unit.  
15 Has that always been the case?

16 A No.

17 Q And can you explain to me what was the  
18 relationship between the two sections prior to the  
19 current relationship?

20 A When I first started with the PLS division,  
21 the investigators reported to the business side, not  
22 the legal side. They considered themselves the

1 client as opposed to litigation support. That  
2 changed.

3 Q By "business side," you mean did they  
4 report to Jim Thompson?

5 A I believe it was Joe T.

6 Q When you said they believed themselves to  
7 be the client, meaning your client?

8 A Yes.

9 Q Then you said as opposed to litigation  
10 support. Is that what their role is now in the  
11 current structure of the office?

12 A Yes.

13 Q So, rather than being the client, they are  
14 now the subordinates?

15 A I don't know that I would call it  
16 subordinate. I would call it a team member, as it  
17 always was. They call themselves the client, yet  
18 they were not responsible for the fee bills and not  
19 responsible for reviewing and they didn't want the  
20 responsibility for any of the monetary problems with  
21 the investigations. They simply wanted to tell us  
22 how to run cases.

---

20

1 Q Now, I'm going to get back to this a little  
2 bit later, but can you tell us what the time frame  
3 was when this relationship was changed between the  
4 two sections?

5 A Sometime in early '94.

6 Q That is, sometime in early 1994, the  
7 relationship between the investigations unit changed  
8 from being a client relationship to being a  
9 litigation support relationship?

10 A Yes.

11 Q But getting back to my original question,  
12 you answered that you were responsible for the  
13 investigation in the sense that you have to make  
14 decisions as to the facts and information that are  
15 gathered by the investigators and outside fee  
16 counsel.

17 My original question was, do you do the  
18 actual field investigation work?

19 A All of it? No.

20 Q Do you engage in any of it?

21 A Sure.

22 Q What sort of field work do you do in an



1 investigative matter?

2 A We take administrative depositions, we  
3 attend the night of closing, we review documents, all  
4 the institutional documents.

5 Q These are in relation to an ongoing  
6 investigation in a pending investigation of an S&L or  
7 whatever matter comes under your jurisdiction?

8 A Sure.

9 Q Are these the same sort of things that the  
10 investigators do in the investigations unit?

11 A No.

12 Q What do they do?

13 A Well, their responsibilities are to gather  
14 the information the night of closing. They are  
15 responsible for containing the documentation,  
16 organizing the documentation and then retrieving the  
17 documentation for further review. Some of them do  
18 case reviews.

19 Q By "night of closing," you mean the actual  
20 closing of the thrift itself?

21 A The intervention, where the OTS appoints  
22 the Resolution Trust Corporation as the conservator

1 of the new thrift and the old thrift is put into  
2 receivership.

3 Q The investigators are responsible for  
4 gathering the information that leads up to that  
5 decision?

6 A No. They are responsible for securing desk  
7 files of the former officers and directors, securing  
8 board minutes, securing large loan files that may  
9 have caused the institution to put up reserve funds.  
10 Those are the items for which they are responsible.

11 Q So they come in literally on the night of  
12 the closing in order to gather all these various  
13 files and information that you have just described --

14 A Yes.

15 Q -- in order to protect them and preserve  
16 them for further investigation --

17 A Yes.

18 Q -- as to whether criminal or civil  
19 liability will attach in order to pursue further  
20 investigative or prosecutorial actions?

21 A Yes.

22 Q What do you mean by case reviews?

1 A A case review is a summary report of a loan  
2 file, the history, the items that should be there but  
3 are not, the items that are in file that are unusual  
4 to a well-documented file and the resulting either  
5 loss or status of the file.

6 Q Actually, going back to the period before  
7 the change in reporting relationships between the two  
8 sections, can you tell me, to whom did the PLS  
9 section report?

10 A Well, I reported to Julie Yanda. She  
11 reported to Washington, D.C.

12 Q She reported directly to Washington, D.C.?

13 A Yes.

14 Q So PLS was a separate part, as it were, of  
15 the Kansas City field office that reports directly to  
16 Washington, D.C.? They did not report directly to  
17 the Kansas City business office?

18 A No, not to the Kansas City business  
19 office. They did report through the Kansas City  
20 legal office for a period of time.

21 MR. DINH: Read back the last response.

22 (The reporter read the record as requested.)

1 BY MR. DINH:

2 Q Who was in the Kansas City legal office?

3 A The person over the Kansas City legal  
4 division was Glion Curtis.

5 Q He was the person who was to whom PLS  
6 reported to?

7 A All divisions within the Kansas City  
8 supersite and the legal division reported through him  
9 at one point in time.

10 Q At one point in time. Can you identify for  
11 me specifically what point in time that was?

12 A I don't know whether or not it was true  
13 before the reorganization in 1992. I don't know. It  
14 was that way when I started working there in the  
15 summer of '92.

16 Q When did it change?

17 A I believe it was the spring of '94.

18 Q Spring of '94, approximately  
19 contemporaneous to the time when the PLS section was  
20 put in charge, as it were, of the investigations  
21 section?

22 A It would have been at the same time.

1 Q Was it part of the same reorganization  
2 plan?

3 A I don't know that it was reorganization.

4 MR. ENDLER: Perhaps you guys should know  
5 the answer to the date since it was mandated by the  
6 Completion Act.

7 MR. MITCHELL: The Completion Act was  
8 signed in law on December 17, 1993. The RTC  
9 responded by putting investigations under some legal  
10 provision.

11 MR. DINH: Thank you for the  
12 clarification. My point in asking the questions was  
13 not to pin down the exact date as it were but to  
14 understand the relationship as this witness  
15 understands that relationship that existed before and  
16 after the reorganization.

17 BY MR. DINH:

18 Q So, was the reorganization of the office,  
19 or whatever you would characterize it, approximately  
20 contemporaneous between the reporting relationship  
21 between PLS and Washington or the legal office in  
22 Kansas City and the reorganization between

---

26

1 investigations and PLS?

2 A I don't understand your question. I'm  
3 sorry.

4 Q I was merely trying to restate my earlier  
5 question.

6 Was it at about the same time and part of  
7 the same reorganization process that investigations  
8 was put under the supervision of PLS when PLS was put  
9 in direct charge -- in direct reporting with  
10 Washington instead of reporting through Glion Curtis  
11 in the legal division?

12 A Yes.

13 Q Did there come a time when you became aware  
14 of Madison Guaranty Savings & Loan Association in  
15 connection with your work?

16 A I was aware of Madison Guaranty Savings &  
17 Loan when I was a commercial attorney in Tulsa,  
18 because it was in the list of institutions that were  
19 reassigned to the Tulsa office when we were  
20 reassigned from the Dallas regional office to the  
21 Kansas City regional office.

22 Q Did you continue to -- so that was --

1 approximately what time did you become aware of the  
2 Madison Guaranty Savings & Loan Association?

3 A March, the first week of March 1991.

4 Q And you transferred from the Tulsa office  
5 to the Kansas City office in April or May of 1992?

6 A That's correct.

7 Q Did you continue to be involved with the  
8 investigation of Madison Guaranty?

9 A No.

10 Q Let me back up. Were you involved in the  
11 investigation of Madison Guaranty while you were in  
12 the Tulsa office?

13 A No.

14 Q How did you come to be aware of it in the  
15 Tulsa office then?

16 A Because I was a commercial attorney, and as  
17 a commercial attorney, all the Arkansas institutions  
18 were given to the Tulsa office to complete the  
19 foreclosures. The bank reps used the commercial  
20 transactions. So as a commercial attorney, that was  
21 one of the institutions whose boxes we received from  
22 the Kansas City office.

1 Originally when I started with the RTC, I  
2 reported to the Dallas regional office. Then they  
3 switched the Tulsa office from the Dallas regional  
4 office to the Kansas City regional office. So we  
5 sent all our Texas files down to Dallas and then they  
6 sent us all the Arkansas files.

7 One of those files was -- it wasn't a  
8 file. One of those institutions which the Tulsa  
9 office then became responsible for was Madison  
10 Guaranty.

11 Q With respect to Madison Guaranty, you were  
12 responsible for the commercial litigation aspects of  
13 that institution?

14 A No, I was not.

15 Q You were not personally involved, but the  
16 Tulsa, Oklahoma office was?

17 A Yes.

18 Q Can you tell me who the attorney was in  
19 your section who was responsible for that?

20 A It was divided up. We received all those  
21 files rather than one attorney handling everything  
22 out of an institution and becoming, say, general

1 counsel for purposes of that institution, as it had  
2 been from the time I started until March of 1991. We  
3 hired more attorneys and then we broke up each  
4 institution into those who were responsible for  
5 personnel, environmental, bankruptcy, foreclosures,  
6 complex litigation, depending on what was emanating  
7 from each institution depending on whether or not you  
8 were involved with it.

9 If you are asking me who the litigation  
10 attorney was, it was probably Glenn Harrison. If it  
11 was the bankruptcy attorney, it was probably Connie  
12 Young.

13 Q So these division of authorities or  
14 division of responsibilities were across substantive  
15 areas not according to institutions?

16 A That's correct.

17 Q This division of responsibility related  
18 only to the commercial litigation aspect of the --  
19 the commercial transactions aspect?

20 A That's correct.

21 Q Did there come a time when you became aware  
22 of an investigation relating to Madison Guaranty

---

30

1 Savings & Loan Association?

2 A Yes.

3 Q Approximately when was that?

4 A When I received the subpoena in the Kansas  
5 City office as of the end of August or the 1st of  
6 September, I don't recall.

7 Q Of what year?

8 A 1993.

9 Q This was a subpoena from whom?

10 A The grand jury, a subpoena from the Little  
11 Rock office.

12 Q And you were senior attorney in the PLS  
13 section at the time?

14 A I was the subpoena response attorney. That  
15 was part of my responsibilities in the PLS division.

16 Q As the criminal coordinator?

17 A Also as criminal coordinator.

18 Q So, all subpoenas that went to the Kansas  
19 City office requesting documents went to you?

20 A Not initially. Initially they went to --  
21 they were served on either Glion Curtis, if he was in  
22 the office, and during most of all that time he was



1 not. It was served on David Swiss.

2 Under David Swiss, there were three  
3 attorneys, commercial attorneys who worked for him  
4 and divided out the subpoenas according to  
5 institutions to which ones they were assigned.

6 This one was assigned to Bridgette Murphy.  
7 Bridgette Murphy immediately sent it to me, which is  
8 part of the process, but in doing so-called me to let  
9 me know that she believed there was a problem with  
10 the subpoena.

11 Q So, you were not the initial person to  
12 accept service of the subpoena?

13 A No.

14 Q But you were the person responsible for  
15 coordinating the production of documents in response  
16 to the subpoena?

17 A For the PLS division, yes.

18 Q It was in this context that you became  
19 involved and aware of an investigation pending  
20 relating to Madison Guaranty Savings & Loan  
21 Association?

22 A No. That's how I became aware of it, but

1 that's not when I was aware of it.

2 Q Okay.

3 A I first received notice from Bridgette  
4 Murphy about the subpoena that requested any and all  
5 documents arising out of Madison Guaranty from 1980  
6 through the demise of the institution.

7 Her concern was that the subpoena was  
8 overly broad. As the PLS subpoena coordinator, my  
9 responsibility was then to go to the PLS attorney  
10 assigned to that institution and coordinate the  
11 response to the subpoena through that attorney.

12 Q Was this subpoena made subsequent to any  
13 criminal referrals by the RTC?

14 A I don't know.

15 Q You do not know what led to the service of  
16 the subpoena?

17 A No, I don't.

18 Q You simply were coordinating production and  
19 the response to the subpoena?

20 A At the time, yes.

21 Q Did there come a time when you became aware  
22 of an investigation by the Resolution Trust

1 Corporation relating to Madison Guaranty Association?

2 A Yes, I was.

3 Q When was that?

4 MR. SCHAUER: Off the record for a second.

5 (Discussion off the record.)

6 BY MR. DINH:

7 Q The witness has referred to some notes.

8 Let me ask you to what you were referring.

9 A This is the chronology of events compiled  
10 and produced to every Banking Committee that has  
11 asked for any documents from the RTC. It was  
12 compiled by the Kansas City office.

13 Q It was compiled by the Kansas City office.  
14 Do you know who personally prepared the chronology?

15 A No, I do not.

16 Q It was passed out to witnesses from the  
17 Kansas City office who had relevant testimony  
18 relating to these matters?

19 A No.

20 Q Who was it distributed to?

21 A It was distributed to each of us, all of  
22 our E-mails. Each of our E-mails were summarized and

1 put in chronological order.

2 Q Who did that?

3 A I don't know.

4 Q Then each of the witnesses then received a  
5 copy of the chronology back?

6 A If in fact we contributed documents to the  
7 chronology, yes, we did.

8 Q Was there anybody else who received a copy  
9 of the chronology?

10 A I don't know. I was in Dallas by that  
11 time. I can't tell you.

12 Q You were in Dallas when you sent this  
13 chronology?

14 A Yes. I contributed my E-mails. I sent  
15 this to them and then they sent this back to me.

16 MR. SCHAUER: Off the record for a second.  
17 (Discussion off the record.)

18 BY MR. DINH:

19 Q And this chronology is what has been  
20 previously produced to us, KC 00300S?

21 A Yes.

22 Q What does the KC stand for?

1 A Kansas City, I assume.

2 MR. SCHAUER: The record should reflect it  
3 stands for Karen Carmichael.

4 MR. DINH: If I can just add to that, that  
5 was the representation that was made to us by the RTC  
6 with respect to the production.

7 MR. ENDLER: So the record is clear, Karen  
8 had nothing to do with the Bates stamping of the  
9 document.

10 MR. SCHAUER: I just wanted to clarify  
11 that.

12 MR. ENDLER: Luckier people got to do  
13 that.

14 MR. DINH: Read back the pending question.  
15 (The reporter read the record as requested.)

16 THE WITNESS: I learned of the  
17 investigation on the 22nd of September 1993.

18 BY MR. DINH:

19 Q Under what circumstances did you learn of  
20 the investigation?

21 A Phil Adams had met with Jean Lewis on the  
22 21st.

1 Q Who is Phil Adams?

2 A Phil Adams is another professional  
3 liability attorney in the Kansas City office whose  
4 responsibility it was to handle Madison.

5 Q And for what purpose was he meeting with  
6 Jean Lewis?

7 MR. SCHAUER: I just want the record to  
8 reflect, I want to be sure that we understand when  
9 people read the transcript that the witness is  
10 referring to her chronology, and that is perfectly  
11 appropriate to refresh your recollection. I just  
12 don't want the appearance when someone reads the  
13 transcript that you were actually remembering these  
14 dates without something to refresh your  
15 recollection.

16 THE WITNESS: That's fine.

17 After Bridgette Murphy had received the  
18 subpoena and I will refer to it as the overly broad  
19 subpoena, she then contacted Fletcher Jackson, who is  
20 an Assistant U.S. Attorney in the Little Rock  
21 office. Fletcher Jackson narrowed the scope of the  
22 subpoena but also mentioned that he was about to

1 receive or knew about all the referrals that were  
2 supposed to be on his desk any day from Laura Jean  
3 Lewis.

4 So, in response to obtaining the documents  
5 that Fletcher Jackson requested through the telephone  
6 call and ultimately through the subpoena, Phil Adams  
7 went to the investigations office to discuss the  
8 grand jury subpoena production and obtain the  
9 designated file, and it is designated by Fletcher  
10 Jackson.

11 Phil Adams was supposed to then send the  
12 Dean Paul, Limited file to Fletcher after he had done  
13 a legal review for confidentiality purposes.

14 BY MR. DINH:

15 Q Now, you said Fletcher Jackson was with the  
16 U.S. Attorney's Office in Little Rock?

17 A Yes.

18 Q Dean Paul, Limited is the subject matter of  
19 these proposed -- or these criminal referrals to  
20 which you were talking about earlier?

21 A No, it was not. But in the course of the  
22 conversation of the Dean Paul, Limited file, which

1 does arise out of Madison Guaranty, Fletcher Jackson  
2 referred to the referrals that Jean was working on  
3 and to which he also knew was coming. So he asked  
4 for all the documents to which these would be  
5 responsive to through that one subpoena.

6 Q And then the next day, the next day you had  
7 a conversation with Phil Adams regarding this?

8 A I had a conversation with Phil after he met  
9 with Jean Lewis.

10 Q On September 21st?

11 A He met with her on the 21st. I met with  
12 Phil on the 22nd.

13 Q What was the substance of your discussions  
14 with Phil Adams?

15 A Phil wanted to advise me that Jean had the  
16 referrals on her desk, that she was making claims  
17 that the now-seated governor of Arkansas would resign  
18 immediately upon the referrals being filed, that it  
19 included several people in positions of power.

20 Phil was very concerned that the  
21 investigator was making claims such as these.

22 Q These are referrals that relate to Madison

1 Guaranty?

2 A Yes.

3 Q He was concerned based on his conversations  
4 with Jean Lewis?

5 A Yes.

6 Q During the course of that conversation with  
7 Jean Lewis, did he view any draft referrals or see  
8 any work product of Jean Lewis during this briefing  
9 that you know about?

10 A Not that I know of.

11 Q He did not have any draft referrals or any  
12 such documentation when he was talking with you?

13 A No. He said that he had requested copies  
14 of them and that she was going to be sending them  
15 over but, no, she would not let him have anything in  
16 writing that day.

17 Q But she said she would send something over?

18 A I seem to recall that she did.

19 Q Is that the appropriate procedure for  
20 handling criminal referrals?

21 A No.

22 Q I mean by sending them over to Phil Adams?

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40

1 A They should go through the criminal  
2 coordinator. Ultimately he would have them.

3 Q That criminal coordinator is you?

4 A Yes.

5 Q So the appropriate procedure would be for  
6 the investigator to send the referrals to the  
7 criminal coordinator?

8 A He would give the -- the investigator would  
9 give it to his criminal coordinator, who would in  
10 turn give it to the legal criminal coordinator, and  
11 then I would distribute it to the attorney  
12 responsible for that institution.

13 Q And when were these procedures established?

14 A In June of '93.

15 Q So, approximately four months before you  
16 first heard of the referrals relating to Madison  
17 Guaranty?

18 A Yes.

19 Q And what was the procedure prior to the  
20 June 1993 directive that set forth the appropriate  
21 procedure?

22 A Well, there were different ones in place.



1 There were national ones that are set out in a graph  
2 that were handed out to all criminal coordinators, be  
3 they legal or investigative criminal coordinators, in  
4 December of 1990 or '91 -- I don't recall. They are  
5 the same ones that the FDIC has. They are for the  
6 most part the same one that is in June of 1993.

7 The head of the investigations unit in the  
8 Tulsa office did not like to follow those procedures  
9 because he did not feel that the legal criminal  
10 coordinator should do any legal review of his  
11 people's work. Therefore, he asked that both the PLS  
12 and the investigations division draft new procedures  
13 to be included in the blue ribbon manual, which was  
14 the procedural manual for the Kansas City office.

15 In that situation, we would get a copy of  
16 the referral after it was prepared and sent to the  
17 enforcement agency.

18 Q The investigations unit of Kansas City  
19 reports to the investigations chief in Washington,  
20 does it not?

21 A At what time?

22 Q Prior to June 1993.

1 A Yes and no. I mean, I know ultimately they  
2 did report to the investigations unit in Washington,  
3 D.C., but they also reported through the business  
4 side locally in Kansas City, too. I'm not sure how  
5 that reporting line works.

6 Q The head -- can you identify the head of  
7 the investigations unit in Kansas City to whom you  
8 were speaking?

9 A Richard Iorio.

10 Q You are telling me that he promulgated,  
11 quote, unquote, "new procedures" in order to put in  
12 the blue ribbon manual that superseded or changed or  
13 altered the national procedures that were put out for  
14 all agencies, including the FDIC?

15 A The first procedures handed to any of us  
16 was at the criminal coordinators office in, I believe  
17 it was December of 1990. It may have been '91. I  
18 don't recall.

19 It was in Washington, D.C. There were  
20 objections by investigations that they should be the  
21 ones in charge and that they really didn't have to go  
22 through legal because at the time legal reporting

1 lines were different, where they did not report  
2 through legal, therefore they shouldn't have to  
3 report the referrals or at least have a legal review  
4 of these before they go out.

5 That was when I was in the Tulsa office.  
6 After I came back from the meeting, I met with  
7 Richard Iorio. Prior to that meeting, our  
8 relationship was very compatible. During the meeting  
9 where we went through the procedures, the  
10 relationship changed significantly. He said he would  
11 not have any of his people send the referrals to an  
12 attorney who had not worked in the U.S. Attorney's  
13 Office for a minimum of five years.

14 Q Subsequent to this conversation is when you  
15 understood him to promulgate, quote, unquote, "new  
16 procedures"?

17 A No. They were ignored. In the meantime,  
18 the whole complexion of the RTC changed with the  
19 organization of all the field offices and who is in  
20 charge of what, so he didn't have to necessarily  
21 comply with them because all the rules were in flux.  
22 So when things finally settled down and he was over

1 the investigations unit in Kansas City and Julie  
2 Yanda is over the PLS section in Kansas City, they  
3 agreed that they would put together the blue ribbon  
4 manual, which is what the Kansas City operated by  
5 because there were no national rules per se under the  
6 new supersite structure.

7 Q Julie Yanda and Richard Iorio came together  
8 in order to promulgate the blue ribbon manual?

9 A The blue ribbon manual, yes.

10 Q That regulated the conduct of criminal  
11 referrals, among other things, criminal referrals in  
12 Kansas City?

13 A It had not been promulgated. We started  
14 drafting them. We agreed we should put them together  
15 in March of 1993 -- '94. Pardon me. It was March of  
16 1994, at a meeting where all the investigators and  
17 all the PLS attorneys met. After that meeting, it  
18 was agreed that Lee Ausen and I would work together  
19 in drafting criminal coordinator procedures that  
20 would be then included in the blue ribbon manual. We  
21 started drafting those procedures and before we had  
22 the final one completed and adopted by the blue

1 ribbon committee, the June procedure directive came  
2 out.

3 MR. SCHAUER: I want to clarify --

4 BY MR. DINH:

5 Q Let me refer you to JY 195. Is this the  
6 June 17, 1993 directive you were talking about?

7 A Yes.

8 Q Does that refresh your memory as to the  
9 year?

10 A 1993.

11 Q The blue ribbon negotiations or  
12 promulgation were going on prior to this directive  
13 came out?

14 A Between the -- we started in the month of  
15 April of 1993. We went through six or seven  
16 different drafts agreeing, not agreeing on different  
17 procedures. We were just completing the final one  
18 and had it submitted to the blue ribbon committee for  
19 approval when this came up.

20 Q So, this meeting in which you first found  
21 out about the criminal referrals relating to Madison  
22 Guaranty was in September, was September 20, 1993?

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46

1 A September 22nd.

2 Q September 22nd. I'm sorry.

3 What steps, if any, did you and Mr. Adams  
4 discuss relating to this matter that has come to your  
5 attention?

6 A We really didn't talk about much at that  
7 time at all. I was in the middle of trying to get  
8 another lawsuit filed. He simply told me that he had  
9 met with her, and he was alarmed by some of the  
10 things that she was saying. In the meantime, he  
11 talked to the U.S. Attorney and had limited the scope  
12 of the subpoena and was taking care of that matter.

13 Q He said he was alarmed by some of what  
14 Ms. Lewis was saying?

15 A Yes.

16 Q Specifically, do you know what it was that  
17 he was alarmed about?

18 A He was alarmed at the type of allegations  
19 that she was making, such as the now-seated governor  
20 will immediately resign upon the submission of these  
21 referrals. He was concerned that she initiated the  
22 conversation by stating that Karen Carmichael and

1 Julie Yanda could not find out about anything she was  
2 about to tell him, and as a former strike force  
3 attorney working at the Department of Justice, that  
4 put him on alert immediately.

5 Q By the sitting governor, to whom are you  
6 referring?

7 A Now I know that it is Jim Guy Tucker to  
8 whom she was referring.

9 Q At the time it was also Jim Guy Tucker who  
10 was the sitting governor of Arkansas?

11 A I guess so. I don't know. I wasn't from  
12 Arkansas. I didn't keep track of who was governor at  
13 the time.

14 Q Do you know what specifically the  
15 allegations -- now focusing on September 22nd itself,  
16 when you were having these conversations with  
17 Mr. Adams. Did he or did you know what specifically  
18 the allegations were against, say, this sitting  
19 governor of Arkansas?

20 A I don't know. I did not know. I had no  
21 idea if Phil did. I do know that she talked to him  
22 for quite a while, and the length of our conversation

1 couldn't have been over three to four minutes  
2 maximum.

3 Q But he was alarmed by these allegations  
4 that she was telling him about?

5 A Yes.

6 Q Yet he did not review any criminal  
7 referrals or review any drafts of any criminal  
8 referrals?

9 A I don't know. I don't believe he did. I  
10 believe she did not allow him to see any of them at  
11 the time.

12 Q Did he know the facts behind the  
13 allegations about which Ms. Lewis spoke?

14 A No.

15 Q And so he was simply alarmed about the fact  
16 that there may be allegations against a sitting  
17 governor?

18 A No.

19 Q What was he alarmed about then?

20 A Her demeanor and the way in which she  
21 presented it to him.

22 Q And we have subsequently found out that the

1 sitting governor has been indicted by the Independent  
2 Counsel with charges relating to Madison Guaranty.

3 A That's irrelevant. The concern was the  
4 manner in which she was relaying the information to  
5 Phil Adams before he had seen any of it. He was  
6 trying to deal with a subpoena. Evidently the U.S.  
7 Attorney already knew about it, because he was asking  
8 for any and all documentation. He was the attorney  
9 who was responsible in complying with the subpoena,  
10 and yet he had no referral in front of him. That was  
11 problematic for him.

12 Q So it was the process rather than the  
13 allegations themselves that he was concerned about?

14 A Absolutely, absolutely.

15 Q I just wanted to make that clear because I  
16 thought you said it was the allegations that were  
17 troubling you and him.

18 A Well, the way in which she related it, yes,  
19 it was partly the substantive portion of her  
20 conversation. But it was also the procedure in which  
21 she was telling him about it. There is nothing  
22 tangible which he could see or was given, and yet he

1 is being given fantastic comments. What is he  
2 supposed to do about it? Yet he is responsible for  
3 this institution. It is problematic for him, sure.

4 Q I take it he initiated the conversations  
5 with Ms. Lewis?

6 A I believe he did. He was trying to get the  
7 documents in response to the subpoena.

8 Q And he asked her questions relating to the  
9 referrals to which Mr. Jackson was referring?

10 A I don't know. I have no idea.

11 Q Let me refer you to Bates stamp KC 0018.  
12 It is an E-mail sent by Julie Yanda to L. Richard  
13 Iorio, bcc: Karen L. Carmichael. It is dated  
14 Thursday, September 30, 16:51:44 CDT. I ask you to  
15 study that.

16 (Witness examined the document.)

17 MR. DINH: The record will reflect the  
18 witness is studying the E-mail in conjunction with  
19 the chronology prepared by the Kansas City office to  
20 which we were referring earlier.

21 THE WITNESS: Okay.

22 BY MR. DINH:



1 Q Can you read me the first two sentences of  
2 that paragraph?

3 A "Richard, I just want to tie up some loose  
4 ends here. I just got off the phone with Glion and  
5 told him we agreed that the criminal referrals in  
6 this matter would not go out until legal had a chance  
7 to review the proposed referrals, particularly as it  
8 relates to the issues of double jeopardy and statute  
9 of limitations."

10 Q By "Glion," I take it that means Glion  
11 Curtis to whom you were referring earlier?

12 A Yes.

13 Q The second sentence that you just read to  
14 us refers to an assurance by Mr. Iorio that the  
15 referral would not go out without first going through  
16 you; that is, going through the PLS section?

17 A Having legal review.

18 Q Was there a fear that this was going to  
19 happen?

20 A Yes.

21 Q Did these fears arise within the PLS  
22 section?

1 A Yes.

2 Q How did these fears come about?

3 A I don't know specifically how the fears  
4 came about except that the U.S. Attorney already knew  
5 of the referrals when the first subpoena came in. We  
6 did not get tangible physical copies of the  
7 referrals, and this is even without the backup  
8 documentation, but the referrals themselves, until  
9 the last week of September. I don't recall which  
10 date it was. I believe that we had received the  
11 referrals on the 30th, and I don't recall whether or  
12 not the attachments, the backup documentation was  
13 with them on that date or whether we got them  
14 subsequent to that date.

15 Q This E-mail was dated September 30th  
16 containing the assurance that the referrals would not  
17 go out until after legal review, in your words.

18 A Uh-huh.

19 Q Is it safe to say that the referrals did  
20 not reach your desk before September 30, 1993?

21 A That's true.

22 Q And you said it arrived subsequent to this

1 E-mail?

2 A No. It arrived almost simultaneously,  
3 maybe like 11:00, right before lunch. It was  
4 somewhere in there.

5 Q On the same day as this E-mail, after  
6 Ms. Yanda talked to Mr. Iorio regarding the  
7 referrals?

8 A No, no. Phil went and picked them up.

9 Q I mean after the conversation to which the  
10 E-mail referred, the conversation between Richard  
11 Iorio and Julie Yanda.

12 A I don't know which came first, the chicken  
13 or the egg. I don't know.

14 Q It was on September 30th that you received  
15 the referral?

16 A Yes.

17 Q There were some discussions prior to this  
18 which led to these conversations between Mr. Iorio  
19 and Ms. Yanda relating to there were conversations or  
20 fears relating to the referrals going out without  
21 having legal review?

22 The record will reflect the witness is

1 studying the chronology.

2 (Witness examined the document.)

3 A Phil Adams picked up copies of the  
4 referrals. The first time he picked up copies of the  
5 referrals, he did not have any supporting  
6 documentation attached. He is simply was handed the  
7 referrals. They were placed on my desk the same day  
8 as the conversation to which this is referring.

9 Q I'm just simply trying to establish the  
10 following facts. You testified that there were fears  
11 that the investigation section would send out the  
12 referrals without clearing it through the PLS section  
13 for the legal review; correct?

14 A Yes.

15 Q Were there discussions within your office  
16 in the PLS section relating to these fears?

17 A Yes.

18 Q These fears were based upon your -- what  
19 were these fears based upon?

20 A A plethora of things, a plethora of  
21 situations that had arisen with the investigators and  
22 various U.S. Attorneys' offices, and compounded then

1 by Ms. Lewis's comments to Phil Adams and their  
2 discussion on the 21st.

3 In June of 1993, I was called by the  
4 Northern District of Oklahoma AUSA in charge of bank  
5 fraud investigations and prosecutions. The reason he  
6 called me was to set up a meeting where he wanted to  
7 speak to me face to face about problems he had had  
8 with the RTC investigations unit.

9 When I arrived in his office, he proceeded  
10 to tell me all the problems that he had had with the  
11 RTC's referrals and how they had all been unfounded,  
12 none of them were supported by any facts, that they  
13 had spent exceptional amounts of money and time and  
14 special authority to travel from their district up to  
15 Kansas City to review documentation which was not  
16 provided to them, that they had to find the documents  
17 themselves.

18 When they finished finding the documents,  
19 none of it panned out as to what the referrals  
20 stated, and that the people he was most angry at were  
21 the same people who had written these new referrals  
22 on Madison, Ms. Lewis, Mr. Noyes, those people within

1 the criminal division of the Kansas City  
2 investigative office.

3 Q This meeting took place in June of 1993?

4 A This took place in June of 1993.

5 Q Who was the AUSA?

6 A Charles McLaughlin. The OIG officer or  
7 person -- I don't know what they refer to them as, I  
8 think agents -- for the Tulsa office was still in  
9 Oklahoma at that time. He also sat in on that  
10 meeting with the AUSA. His name is Tom McDade.

11 The bottom line to the conversation was  
12 that the AUSA didn't trust any referral written by  
13 these people, and if he ever received one more  
14 referral written by these people that legal had not  
15 absolutely put their blessing on and agreed that this  
16 was in fact a legitimate referral, he would not  
17 accept the referral and he would seek reimbursement  
18 for all of their time and energy they had already  
19 wasted to date.

20 Q This was in June 1993?

21 A Yes, it was.

22 Q Approximately the same time when the

1 directive was issued relating to legal review by PLS?

2 A It was after it. It was the end of June,  
3 possibly the 1st of July. But I think it was the end  
4 of June.

5 Q The end of June, and when was this  
6 directive issued?

7 A The 17th or the 16th.

8 Q Of June 1993?

9 A Yes.

10 Q So, approximately the same time, within a  
11 two-week period of the directive?

12 A Sure, but it was after the directive had  
13 come down.

14 Q So, since June -- so, this plethora of  
15 information that led to your fears had started in  
16 June of 1993, four months prior to your hearing of  
17 any criminal referrals relating to Madison Guaranty?

18 A No. It started before that. Jean Lewis  
19 had been assigned to another institution in Arkansas  
20 involving a former officer and director with whom we  
21 also had bond litigation ongoing.

22 Q I'm asking specifically about the fears

1 that led you to doubt that the criminal referral  
2 would be processed through you rather than sent  
3 directly to the U.S. Attorney's Office in September  
4 22 through September 30, 1993.

5 MR. ENDLER: I think she is trying to  
6 respond to that question.

7 MR. DINH: I'm just trying to clarify.

8 THE WITNESS: The fear arose from the  
9 integrity of the referral and the integrity of  
10 following procedures due to the history the PLS  
11 division had with that group of investigators, and  
12 the history was much longer than just the day that we  
13 found these referrals.

14 BY MR. DINH:

15 Q Let's talk about those procedures. I will  
16 refer you back to JY 0195. This is a memorandum  
17 dated June 17, 1993.

18 Can you tell me who the memorandum is  
19 from?

20 A It is from Dudine, Hindes, Barker and  
21 Patchan.

22 Q Is this the memorandum that set up the

1 directive as far as the appropriate legal review of  
2 criminal referrals?

3 A Yes.

4 Q Can you refer me to the specific language  
5 in that memorandum that suggests or mandates such  
6 review?

7 A The first paragraph of page 2, stated  
8 number 2 under the term "Policy."

9 Q Can you read that for the record.

10 A "Except in rare circumstances, criminal  
11 referrals shall be reviewed by RTC investigations and  
12 legal division criminal coordinators before they are  
13 delivered to the U.S. Attorney and the FBI or other  
14 investigative agency."

15 Q Can you read the next sentence for us.

16 A "RTC criminal coordinators shall make  
17 certain that all required information and support  
18 documents are provided."

19 Q Now, the RTC criminal coordinator, that  
20 refers to the legal coordinator, or does that refer  
21 to the investigative coordinator?

22 A Both.

1 Q So, does that sentence -- what do you read  
2 the next sentence to mean, to impose an obligation  
3 on, the "RTC criminal coordinators shall make certain  
4 that all required documentation and support documents  
5 are provided"? That speaks to both criminal  
6 coordinators?

7 A Yes.

8 Q By that, you mean the criminal coordinator,  
9 investigations have to make sure you have information  
10 and support documents for the referrals for the  
11 purpose of your review?

12 A That would be part of it. But also before  
13 it went to the U.S. Attorney or FBI agent, that all  
14 of it is attached.

15 Q And "all of it" meaning the information and  
16 support documents?

17 A Yes.

18 Q But there is no substantive provisions as  
19 to -- there is no provision for any substantive  
20 guidelines as to how your review should be conducted?

21 A No.

22 Q So by quote, unquote, "legal review," do



1 you mean review for issues of law or do you mean  
2 review by the legal division?

3 A Well --

4 MR. ENDLER: As she understands this memo.

5 BY MR. DINH:

6 Q Yes, and as you understand the process as  
7 related to your review conducted in September of 1993  
8 or in October of 1993.

9 A As I understand this procedure and policy  
10 directive, legal criminal coordinator, what this  
11 means, as far as my responsibilities are concerned, I  
12 was to review the referral before it went out, make  
13 sure all the attached documents state the same thing  
14 as the referral and do as I am to do, which is the  
15 responsibility as the lawyers to do a legal review of  
16 the referral.

17 Q By what do you mean "legal review"?

18 A Simply that the documents are stating the  
19 same story as the referral, and if we are missing  
20 anything legally, then we should add it. If we are  
21 stating something that needs to be addressed, then we  
22 need to address it there before we send it on.

1 Q And you conducted such a review with  
2 respect to the criminal referrals relating to Madison  
3 Guaranty?

4 A Yes.

5 Q Those referrals were referred to you on  
6 September 30, 1993?

7 A Yes.

8 Q How long did your review take,  
9 approximately?

10 A We were originally given four weeks. Then  
11 we were given two weeks. As it turned out, we were  
12 given eight days. We worked until 4:30 and 5:00 in  
13 the morning four nights in a row and got them out by  
14 noon on October 8th.

15 Q Let me refer you to a memorandum dated  
16 October 7th from Karen Carmichael and Philip Adams to  
17 Julie Yanda and ask you to study that. The Bates  
18 stamp is PLS 0001S.

19 (Witness examined the document.)

20 Can you describe this memorandum to us.

21 A This is the legal review we made of the  
22 various referrals known as the Madison Guaranty

1 referrals.

2 Q It is a written review of your work with  
3 relation to these matters?

4 A Yes.

5 MR. BRENNER: This relates only to the  
6 second set of referrals, not C0004.

7 BY MR. DINH:

8 Q Is that correct?

9 A These were the ones that were  
10 contemporaneous with the September referrals. I  
11 don't recall which ones were or were not in there.

12 Q These were the referrals made on September  
13 30, 1993 to you and subsequently passed on to the  
14 U.S. Attorney's Office?

15 A Yes.

16 Q Can you tell me how many pages was this  
17 written review you submitted?

18 A 13 pages.

19 Q How many legal reviews of criminal  
20 referrals had you done prior to this review of these  
21 particular referrals?

22 A None.

1 Q This was your first one?

2 A Yes.

3 Q Even though this directive has been in  
4 place for four months?

5 A It was the first referral I had obtained  
6 since the time they had given a directive down.

7 Q You said that the original directive was  
8 written by Jim Dudine, among others?

9 A Yes.

10 Q The June 17, 1993?

11 A Yes.

12 Q Have you seen very many written legal  
13 reviews, obviously beyond the time of this legal  
14 review, since you had done none prior to that?

15 A I have done four since that time. But by  
16 that time, we were on the downhill side of all legal  
17 reviews. Most of the criminal referrals were  
18 submitted immediately or within six months of  
19 intervention.

20 By September of 1993, the RTC I don't  
21 believe intervened in any more institutions.  
22 Therefore, few criminal referrals were being made at

1 that time.

2 Q So, this legal review was just something  
3 that came up for a short period of time toward the  
4 end of the criminal referral process in the grand  
5 scheme of things?

6 A It wasn't novel. The legal review, as far  
7 as my participation in legal review, this was the  
8 first opportunity that I had been given to do a legal  
9 review. From that time since, I have looked at four  
10 more and have done written reviews of those  
11 referrals.

12 Q Of those four, how many were written?

13 A All of them were.

14 Q All of them were written?

15 A Yes.

16 Q Do they follow the similar format to which  
17 you had --

18 A It depended. Typically the review simply  
19 says you are saying this, the documents are saying  
20 this, let's add more, let's add different  
21 information, check this out, see if the person is  
22 still alive to whom you are referring as a witness,

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66

1 those kind of suggestions.

2 Q You stated this was your first legal review  
3 that you had done.

4 A Yes, of a criminal referral for the RTC,  
5 yes.

6 Q Prior to conducting this review, did you  
7 talk with anybody within the RTC as to how this  
8 review should be done and what kind of work product  
9 would come out?

10 A Certainly.

11 Q And would it come as a surprise to you that  
12 Mr. Dudine, who was the author of the June 17th  
13 directive testified before us that up to the point of  
14 seeing your written consultation of review on October  
15 7, 1993, he had not seen any other written  
16 consultations from any of the other offices?

17 A It doesn't surprise me one way or the  
18 other.

19 Q So you knew that written legal reviews were  
20 not a common occurrence as of October 7, 1993?

21 A No.

22 Q You did not know that?

1 A No.

2 Q But you had talked to other people  
3 regarding what is expected of your legal review?

4 A I spoke with Phil Adams. Phil Adams had  
5 worked with the strike force there in the Kansas City  
6 Department of Justice. He was very used to doing  
7 reviews. He and I worked on this together. That's  
8 how we chose the format because of the time allowed  
9 to us and the documentation that was provided to us.

10 We were simply trying to distinguish what  
11 was in the referrals from what the backup  
12 documentation was saying and asking them to make the  
13 backup documentation in the referrals state the same  
14 thing. That was the purpose of the review.

15 This was not an intention of authorization  
16 or no authorization for the referrals to go out.  
17 They were simply a review and a summary of what each  
18 were saying and how they needed to coordinate and  
19 suggestions on how to make that happen.

20 Q And so it is not a criticism of the  
21 referrals itself; is that what you are telling me?

22 A Critique, maybe. Criticism, no. What it

1 is is telling the investigator -- we do this back and  
2 forth on our civil cases. I don't understand what is  
3 so new and different about saying the same thing on a  
4 criminal case. Your documents aren't saying what you  
5 are saying in the review or in the referral, make  
6 them coordinate, make them say the same thing. If  
7 this is really what the documents state, then say  
8 that in the referral. You are not taking into  
9 account these facts that are before you and that you  
10 know about. Make sure that you state that in the  
11 referral.

12 That's what the review is for.

13 Q You based this model of this review on Phil  
14 Adams's experience as a strike force attorney in the  
15 Department of Justice in the Kansas City office?

16 A For the criminal part. The other method  
17 which I used is how I do all of my civil cases. We  
18 have to put it in writing. Every quarter the  
19 investigators send out a plan of investigation that  
20 states certain things they believe are going on with  
21 the civil cases and each claim area in the civil  
22 case.

1 I write back, in writing you have stated  
2 this but this is what is really going on, you have  
3 stated this, this part is correct, this part is  
4 incorrect, please add this, don't add that, whatever  
5 the case may be.

6 Q Let me just understand a little bit more  
7 with respect to your understanding of Phil Adams's  
8 experience. His experience was with the strike force  
9 as an attorney in the U.S. Attorney's Office?

10 A Yes.

11 Q And those referrals are made on the  
12 basis -- the substantive effect of those referrals  
13 are -- of that review from which you were basing your  
14 own legal review was a decision by the strike force  
15 within the Department of Justice whether or not to  
16 prosecute further on a particular matter?

17 A No.

18 Q What was the purpose of those reviews?

19 A I have no idea what the purpose of his  
20 reviews were. I was asking him for help and we were  
21 coordinating it, me as a criminal coordinator, he as  
22 the assigned attorney on Madison, how we should

1 review these referrals.

2 In reviewing the referrals, my estimation  
3 is giving the investigator direction as to what needs  
4 to be added or corrected, clarified or whatever the  
5 case may be so that the referrals going out under the  
6 agency's label are correct. That is my intention,  
7 that's what the intention was at the time that we did  
8 the reviews.

9 Q So you used Phil Adams's model for how to  
10 conduct the review without knowing specifically for  
11 what purpose that model was originally used?

12 A No. I did not use a model of Phil Adams.  
13 We started this at 5:30, the written review. We were  
14 reviewing the referrals from the time we got them  
15 through the weekend up until Friday, when everything  
16 was completed.

17 I took the referrals first and made all my  
18 notes on them. Then he took the referrals and made  
19 his own notes on all of them. Then we got together,  
20 we reviewed and coordinated what we thought, each of  
21 us individually thought was missing or was accurate  
22 or inaccurate on the referrals versus the



1 documentation.

2 Q You said you started this at 5:30 on  
3 October 7?

4 A On October 7th, I started typing it. We  
5 didn't start it. We started it September 30th.  
6 There is no secretary that is going to work until  
7 4:30 in the morning to type that. I started typing  
8 it.

9 Q You started typing this seven-page document  
10 based on the compendium of the notes you prepared  
11 during the two-week period you were permitted to  
12 conduct this legal review?

13 A 13-page document, yes.

14 Q Let me refer you to Bates number KC 0089S.  
15 Can you identify to me what that is.

16 (Witness examined the document.)

17 A These are my handwritten notes, and it is  
18 probably -- these are the notes that I made as we  
19 were discussing each of our individual comments on  
20 each separate referral.

21 Q These are the notes you made with respect  
22 to referrals in the course of your conducting your

1 legal review?

2 A These are the notes I made as Phil and I  
3 were discussing what each of us had found  
4 individually.

5 Q How long did these discussions last? When  
6 did they start and when did they end?

7 A I don't recall.

8 Q Was it more than one day?

9 A Yes.

10 Q This was all continuing throughout the  
11 period of the review?

12 A No. I reviewed the documents individually  
13 from September 30th, whatever day that was, and I  
14 believe it was a Friday, maybe a Thursday. I worked  
15 the entire weekend making my own comments and legal  
16 review of the referrals.

17 Then I gave them all to Phil for the same.  
18 Then starting Tuesday, I believe -- and I don't  
19 recall if it was Tuesday or late Monday -- I don't  
20 recall -- but I believe it was on either Tuesday  
21 night or Wednesday night, sometime during the week,  
22 we started -- we each took our separate notes and

1 then we went through each of them, each of the  
2 referrals and we started making master lists as to  
3 those things which we believed needed to be stated in  
4 a legal review.

5 Q So, the legal review, the product of which  
6 was the October 17, 1993 memo which you typed up, is  
7 a compendium of all these concerns that you thought  
8 needed to be stated in that review?

9 A Yes.

10 Q And they originated from notes like this  
11 which I have shown you Bates stamped KC 0089S?

12 A Yes.

13 Q Can you read the first line of these  
14 handwritten notes.

15 A Starting with C?

16 Q Yes.

17 A "CR 0210, probably good referral,"  
18 underlined.

19 Q CR 0210 refers to one of the criminal  
20 referrals that we have been talking about?

21 A Yes.

22 Q Let me refer you now to page 11 of the

1 October 17 legal review memorandum, Bates stamped PLS  
2 0011S; page 12 of the same memo, Bates stamped PLS  
3 0012S; and page 13 of the same memo, Bates stamped  
4 PLS 0013S.

5 I'm sorry. I'm misreading. Just to page  
6 11 and 12, PLS 11 and 12S.

7 A Yes.

8 Q Are those your discussions and questions  
9 and comments with respect to CR 0210?

10 A Yes.

11 Q And as I see it here, there are seven  
12 questions that you had with respect to that referral?

13 A Yes.

14 Q And you had noted before in your notes that  
15 this was probably a good referral?

16 A Yes.

17 Q And so, the process here is you were just  
18 listing the questions that were raised in your mind  
19 even though this was admittedly probably a good  
20 referral?

21 A Absolutely.

22 Q It was in this process of helping the

1 investigators out and trying to include the referral  
2 with which this legal review was written?

3 A Yes.

4 Q So, it is again, just to restate your  
5 testimony and be absolutely clear on this, it was a  
6 process of critiquing or assisting the investigative  
7 staff and not as criticism of the investigative  
8 staff?

9 A Yes.

10 Q You did not expect that you had any  
11 substantive authority to hinder the filing of this  
12 criminal referral with respect to going on to the  
13 U.S. Attorney's Office?

14 A Absolutely not.

15 Q And as a matter of fact, do you know what  
16 Julie Yanda did with this interoffice memorandum  
17 dated October 7, 1993?

18 A Yes, I do.

19 Q What did she do?

20 A She E-mail attached it to all of the people  
21 to whom she reports, and they had it immediately upon  
22 the time that she had given them, Richard Iorio, Jim

1 Dudine, all those people and the investigators who  
2 would have access to the referrals, and this was our  
3 legal review of the referrals.

4 It was supposed to have been out by noon on  
5 Friday, October 8th. She had given them her word  
6 that all our legal review would be completed by that  
7 time, and we had it to her. She did some clerical  
8 changes, things like moving commas and those kind of  
9 things around, and then simply sent it to them.

10 Q This was October 8, 1993?

11 A Yes.

12 Q Is this the normal process with which these  
13 criminal referrals are treated?

14 A I have no idea. This was the first one  
15 that I had done a legal review on. By this time we  
16 were getting pressure from everyone to release these,  
17 to quit standing in the way. We were first given  
18 four weeks. Then it was down to two weeks and then  
19 it was down to eight days.

20 I was not involved in who she was giving  
21 these to, who was asking her for us to hurry up, who  
22 was talking to her in any way, shape or form. She

1 would simply come to my door and say you have two  
2 weeks. Then she came to my door again and said I  
3 told them they would have them by Friday at noon, get  
4 it done. So we did.

5 Q As a matter of fact, do you know what  
6 handled the criminal referrals on October 8?

7 A No.

8 Q Do you know if they were referred to the  
9 U.S. Attorney on October 8, 1992?

10 A I saw a transmittal the next Tuesday that  
11 said they had gone out on the date we submitted our  
12 review.

13 Q Your legal review was completed on October  
14 8 and the criminal referrals were also submitted on  
15 October 8, 1993?

16 A Yes.

17 Q Have you subsequently reviewed the criminal  
18 referrals that went to the U.S. Attorney's Office?

19 A No.

20 Q So you don't know whether any of your  
21 suggestions or comments or concerns were addressed by  
22 Julie Yanda and heeded by the various people before

1 the criminal referrals went out?

2 A Only because of the timing involved. I  
3 make the assumption that no changes were made because  
4 there is not enough time to make any of those changes  
5 and get them out in the same day.

6 Q There was no pressure to get them out on  
7 the same day, was there?

8 A I don't know. There wasn't on my side. I  
9 mean, I had a deadline. I met the deadline. That's  
10 it. That's all I know.

11 Q So if changes were needed to be made, they  
12 certainly could have been made and then the referral  
13 have been sent on a subsequent date?

14 A Yes, sir.

15 Q Let me refer you back to the last sentence  
16 of the first page of your October 1993 memorandum  
17 Bates stamped PLS 001S. Can you read the last  
18 sentence of that page for me.

19 A Under the term "Scope"?

20 Q Yes.

21 A "We base our conclusion solely on our  
22 review of these documents."

1 Q "These documents" are which documents?

2 A The documents are those that were attached  
3 to the referrals.

4 Q And reading your memorandum, they refer to  
5 the documents within the professional liability files  
6 as well as the Special Counsel investigative report  
7 prepared by the law firm of Borod & Huggins?

8 A Yes.

9 Q These are the only documents that you base  
10 your conclusion upon, according to this last sentence  
11 of your --

12 A They were the only documents, yes.

13 Q Was there any other information that are  
14 not documents upon which you base your conclusions?

15 A Yes.

16 Q Can you tell me what it is.

17 A Phil Adams had several phone calls with the  
18 U.S. Attorneys in Little Rock, and so some of his  
19 information was also based on that. One of the  
20 discussions I believe that we also put in there was  
21 knowing that Mr. McDougal had been acquitted and who  
22 had been acquitted. We didn't have copies of the

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1 indictment at the time that we did the review, but we  
2 were told verbally by the AUSA who had been indicted  
3 and who had been acquitted and what transactions  
4 there were.

5 Q Do you know who Mr. Adams talked to at the  
6 U.S. Attorney's Office?

7 A I don't recall right now.

8 Q Now, as I recalled earlier, you expressed  
9 some consternation with the fact that the U.S.  
10 Attorney's Office had heard about work on these  
11 pending criminal referrals by the RTC.

12 A Yes.

13 Q And that raised a question in your mind how  
14 they came about this information?

15 A Yes.

16 Q That raised fears in your mind regarding  
17 whether the investigators themselves may be  
18 subverting the process through which -- the normal  
19 process of handling the criminal referrals within the  
20 RTC?

21 A Yes.

22 Q Does that normal process include Mr. Adams



1 talking with the AUSA regarding the substance of the  
2 criminal referrals that he was reviewing?

3 A We called after we got the referrals  
4 because there was reference to earlier referrals  
5 within the referrals and also litigation handled by  
6 the AUSAs.

7 So we called the AUSA to find out what  
8 litigation and acquittal and indictments to which  
9 these were referring, because they were not  
10 attached.

11 Q So, the information you got from the AUSA  
12 was limited to these subject matters; that is, the  
13 lawsuit against or the prosecution against  
14 Mr. McDougal and the subsequent indictment and the  
15 other matters that the AUSA would have firsthand  
16 knowledge of?

17 A Absolutely.

18 Q In addition to phone calls made by  
19 Mr. Adams to the AUSA, did you rely on any other  
20 information, documentary or otherwise, in conducting  
21 the legal review between September 30th and October  
22 7th?

1 A No.

2 Q Can I refer you to page 7 of your legal  
3 review, Bates stamped PLS 0007S. This relates to  
4 criminal referral number CR 0196.

5 Can you read for us your concern number 6  
6 with respect to this referral.

7 A "Number 6, could the four \$3000 checks be  
8 relevant to a fundraiser event for couples (i.e.,  
9 banquet, gala, et cetera) for which the tickets cost  
10 \$1500 a person (in 1985, the legal limit was not  
11 \$1000 but was \$1500)."

12 Q Do you know whether this was your concern  
13 or this was Mr. Adams's concern?

14 A It was both.

15 Q Can you tell me what was the basis of that  
16 question or concern that you both shared?

17 A The way in which the referral was stated  
18 simply added -- they were accusing -- the referral  
19 was accusing certain people of contributing funds  
20 from the Whitewater Development Corporation, I  
21 believe -- I don't recall exactly, I would have to  
22 have the referral right here -- taking moneys from a

1 loan and then contributing those funds illegally to a  
2 political campaign. The emphasis was on the amount.

3 Working around political process, it seemed  
4 to me, since all of them were dated the same date,  
5 that what we are talking about here was some kind of  
6 political campaign contribution, usually it is a gala  
7 or a meal where contributors pay the same amount,  
8 because the suspicion from the investigator was it  
9 was all in the same amount, equal amounts and it was  
10 all contributed on the same day.

11 Well, in my mind that means there was some  
12 kind of political function. So that's why I wrote  
13 the first part of it as could this be for a political  
14 function, and the second part, and I think it was  
15 Phil -- I don't know. I know we discussed it. But I  
16 think he was the one that went to the library and  
17 researched how much the legal contributions were at  
18 the time that these were made.

19 Q Phil was the one who researched the  
20 campaign contribution limits?

21 A I believe so.

22 Q The relevance of that, of course, is that a

1 \$1000 limit may be legal whereas a \$1500 limit may be  
2 illegal?

3 A Vice versa, I believe. It was 1500 and  
4 then it was shrunk to 1000. At the time it was  
5 contributed, 1500 was legal.

6 Q That was the point of my question, and  
7 actually it was not vice versa. At the point you  
8 were conducting this legal review and writing up this  
9 document, \$1000 was the legal campaign contribution  
10 limit and previous to that \$1500 was the maximum  
11 legal contribution limit. Therefore research would  
12 have to be conducted as to when the amount shrunk, in  
13 your words, to \$1000.

14 A No. Even though that may be true, our  
15 emphasis was on how much the legal limit was at the  
16 time that the contributions were made, and we simply  
17 wanted to find out what they were in 1985. That's  
18 what we checked on.

19 Q So you wanted to make sure that even if  
20 this were made for a political fundraiser, that they  
21 were not in violation of any campaign financing laws?

22 A Correct.

1 Q Do you know who the checks were made out  
2 to?

3 A Yes. I need the copies of the checks. The  
4 checks were attached to this. I believe the checks  
5 were made to the campaign, political campaign fund.

6 Q So, it was made to a political campaign  
7 fund?

8 A Yes.

9 Q So, indeed, it was a fundraiser of some  
10 sort that led to these checks?

11 A It appears so. I believe that that's what  
12 happened.

13 Q They were contributions to a political  
14 campaign fund?

15 A Yes.

16 Q So, the natural question that arose was  
17 were they legal contributions.

18 A Yes.

19 Q And your testimony is that it was insight  
20 that led you to question whether these \$3000 checks  
21 were in the phrasing of the questionable  
22 contributions for a fundraiser for the maximum

1 amount --

2 A Logical deduction. The investigator said  
3 each check was for 3000, how dare they, the limit was  
4 1000. It said remitter on the bottom, Mr. and Mrs.,  
5 my mind said that is two people, that is 1500. I  
6 wonder if the limit is 1500. We checked it. It  
7 was. It is just a logical deduction.

8 Q It is out of mere happenstance, as it were,  
9 the prescience of your legal deduction, it was  
10 reported in the press that indeed these contributions  
11 were for particular fundraisers and they were checks  
12 for specific couples?

13 A Yes.

14 Q And you relied on no other information or  
15 documentation or conversations other than your  
16 internal logical deduction to raise this concern?

17 A Absolutely.

18 Q Did you have occasion to talk to a person  
19 named April Breslaw during this period of time of the  
20 referrals?

21 A Yes, I did.

22 Q Who is April Breslaw?

1 A April Breslaw is a PLS attorney in  
2 Washington originally assigned the responsibility of  
3 the professional liability claims arising out of  
4 Madison Guaranty.

5 Q She is assigned to this specific  
6 institution?

7 A She was at one time.

8 Q And in what context did you talk with or  
9 have contact with Ms. Breslaw during the conduct of  
10 your legal review?

11 A When I received the referrals, there was a  
12 list of people in my mind that I needed to contact to  
13 find out if they had additional information that  
14 could shed light on any of these transactions which  
15 were referred in the referral.

16 When we do a professional liability review,  
17 earlier I stated that there are case reviews of  
18 target transactions. The referrals were in a form  
19 that I found cryptic in that they would refer to XYZ,  
20 Inc. loan and then make a conclusory statement in  
21 regard to that loan.

22 But I didn't know anything about the

1 transaction. So I didn't know if in fact that was  
2 true. So, I was looking for the case reviews on that  
3 particular transaction.

4 So I called April Breslaw, asked her if we  
5 had done a D&O investigation, because that is the  
6 first question, if yes, you know there is going to be  
7 case review. She said we closed that out, we  
8 continued with litigation on the accounting  
9 malpractice or accounting liability.

10 Accounting liability, you don't get into  
11 specific transactions. You simply go on to loss of  
12 the institution and the actions or inactions of the  
13 accounting firm.

14 MR. BRENNER: For the record, D&O stands  
15 for directors and officers liability?

16 THE WITNESS: Yes.

17 She said no, they didn't have any case  
18 write-ups on any of the loans, but there was a record  
19 known as the Borod & Huggins report. She said one of  
20 the investigators in the Kansas City office had  
21 already asked her for it and she was sending a lot of  
22 documents down to him and she would be glad to also

1 send me a copy of the Borod & Huggins report.

2 BY MR. DINH:

3 Q She was one of the persons who provided  
4 documents which you relied upon to conduct your  
5 review?

6 A That Borod & Huggins report to which I  
7 referred to in the bottom of that first page, yes.

8 Q Did she provide to you any other document  
9 or information during the conduct of your review?

10 A No.

11 Q She did not talk with you -- strike that.

12 Did you during the conduct of your review  
13 have any further contact with her?

14 A I don't recall that I did during that  
15 period of time. I do know that I spoke with her a  
16 total of maybe five minutes on either two  
17 conversations or an E-mail verifying that I had  
18 received the Borod & Huggins report. I don't believe  
19 that we really discussed anything else at the time.

20 But mostly, it surrounded the Borod &  
21 Huggins report and any documentation that she may  
22 have in her possession that could help me with review

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1 to any target transaction.

2 Q She did not talk to you substantively about  
3 the transactions themselves?

4 A No.

5 Q She did not talk to you regarding any legal  
6 liability or questions that may come out of any  
7 representations of any professionals in relation to  
8 Madison Guaranty?

9 A No.

10 Q Do you know who Ken Foust is?

11 A Yes.

12 Q Who is it?

13 A He is an investigator.

14 Q In Kansas City?

15 A Yes.

16 Q Did there come a time when Ken Foust sent a  
17 request to you or somebody in the PLS section for  
18 information relating to Madison Guaranty Savings &  
19 Loan Association?

20 A Yes.

21 Q What was the substance of that request?

22 A That was a whole different area of review



1 than what I was doing on the criminal review. I  
2 don't know when it got started. I know it was prior  
3 to the time that I was doing the criminal review, but  
4 I was not aware of it until the Borod & Huggins  
5 report came up.

6 She was sending all of the documents to  
7 us. So they all came into the PLS office and he  
8 reviewed them there at our office. That was the  
9 first time that I knew that he was involved in it.  
10 Anything having to do with that, I wasn't involved  
11 in.

12 Q By "she," you meant April Breslaw?

13 A Yes.

14 Q He came to your office in order to review  
15 the documents April Breslaw provided to you with  
16 respect to your review?

17 A No. She was sending them out. She simply  
18 sent them to legal as opposed to sending them over to  
19 investigations. She simply sent them to the PLS  
20 office. As a PLS office, they were sent and put into  
21 a room. I simply took a copy of the Borod & Huggins  
22 report.

1 Q She sent more documents than simply the  
2 Borod & Huggins report?

3 A There was a box of them.

4 Q He had access and in fact referred to these  
5 documents in the conduct of his investigation?

6 A Yes.

7 Q This was independent from your own legal  
8 review of these nine criminal referrals?

9 A Yes.

10 Q Did there come a time when he made an  
11 E-mail request for information to Julie Yanda and  
12 Richard Iorio -- let me refer you to KC 0031 -- for  
13 information relating to Madison Guaranty and his  
14 investigation?

15 A Yes.

16 Q Can you describe to me what the substance  
17 of that request was? What sort of information was he  
18 seeking?

19 A He was seeking a deposition taken on  
20 Beverly Bassett and documents in connection with the  
21 Seth Ward investigation.

22 Q The deposition of Bassett was in connection

1 with the litigation surrounding Frost & Company?

2 A Yes.

3 Q And this request was ultimately forwarded  
4 to you?

5 A Yes.

6 Q What actions did you take, if any, with  
7 respect to this request?

8 A I didn't take any. Julie copied both Phil  
9 and I on anything to do with Madison at that time.  
10 This would concern Phil more than it would concern  
11 me. I simply knew where the documents were.

12 Q So Phil took further actions on this  
13 request?

14 A I don't know. It just would have concerned  
15 him more than me since he was the responsible  
16 attorney for Madison.

17 Q Let me refer you to KC 0032, an E-mail from  
18 Julie Yanda dated October 7, 1993, 16:30:02,  
19 addressed to Philip Adams and Karen L. Carmichael.  
20 Can you read the last sentence of that for me.

21 A "Can you contact April and find out if she  
22 knows the answers. If not, let's talk about how to

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1 get this for Ken."

2 Q By "this for Ken," I presume that that was  
3 his earlier request for information he thought was  
4 relevant to his investigation?

5 A Yes.

6 Q And my next question was actually  
7 encompassed in the last question. Is it your  
8 understanding that the reason why he was requesting  
9 this information was that he thought it was relevant  
10 to this investigation?

11 A Evidently. That's the day before my review  
12 is due. I may have been copied on E-mail. It didn't  
13 mean that I was responding in some way. My  
14 responsibility was to the criminal review.

15 Q I understand at the time there were a lot  
16 of things going on on your plate. I simply ask you  
17 these questions because these E-mails show that they  
18 copied you and at some point or another it was sent  
19 to you.

20 A Yes.

21 Q Let me refer you then to the Friday,  
22 October 8, 1993 E-mail from April Breslaw to Ken

1 Foust cc: Yanda, Iorio, Adams and Carmichael. Can  
2 you study that for me.

3 (Witness examined the document.)

4 Can you read for me when you are finished  
5 the first sentence of the second paragraph of that  
6 E-mail relating to the Beverly Bassett deposition.

7 A "If you are still following up on the  
8 reporter's allegations that Mrs. Clinton made calls  
9 to Ms. Bassett regarding securities offering in 1984  
10 or 1985, I can tell you that that matter was not in  
11 any way relevant to the Foust malpractice case.

12 Q Mr. Foust wasn't asking Ms. Breslaw for an  
13 opinion as to what is relevant or what is not, was  
14 he?

15 A I have no idea.

16 Q You did not know what Mr. Foust was working  
17 on as far as his investigation was?

18 A No, I did not.

19 Q To the best of your knowledge and  
20 recollection, do you know if Ms. Breslaw knew what  
21 investigation he was working on?

22 A I have no idea.

1 Q This was unsolicited advice to Mr. Foust  
2 from Ms. Breslaw as to what is relevant to --

3 A No, that's not true. I just don't know. I  
4 was not privy to their conversations. I simply was  
5 copied on an E-mail. I have no idea what their  
6 conversations were prior to that, whether that --  
7 whether this is a response to the earlier E-mail  
8 only. I was simply copied on this response. I don't  
9 know what she was referring to, nor was I privy to  
10 those conversations.

11 Q Fair enough. Thanks.

12 THE WITNESS: I would like to take a  
13 break.

14 (Recess.)

15 BY MR. DINH:

16 Q Let me refer you to Bates stamp KC 0003S,  
17 an E-mail dated Wednesday, October 13, 1993, 13:38:37  
18 CDT from Karen Carmichael to JFY and PJA.

19 Can you tell me who JFY is?

20 A Julie Yanda.

21 Q PJA?

22 A Phil Adams.

1 Q Can you read for me the last sentence of  
2 that?

3 A "As you will remember, the ethics program  
4 director is the subject of the phone call we received  
5 from Washington two weeks ago with regard to the  
6 review of the Madison referrals."

7 Q To what conversation were you referring to?

8 A When we were doing our referrals, in the  
9 middle of that time I received a phone call from  
10 Washington from one of the criminal liaisons who sits  
11 on the bank fraud working group with the DOJ.

12 I don't recall who it was. It has to be  
13 one of three people, though. It was either Carl  
14 Gamble, Greg Golden or Tracy Whitaker.

15 Q Why did you say it has to be one of these  
16 three people?

17 A Because they are the only three people in  
18 the RTC that sit on that committee.

19 Q So you talked to one of these three people  
20 rather than the DOJ person yourself?

21 A Correct.

22 Q This person had had a conversation with the

1 DOJ person?

2 A Yes.

3 Q Do you know who that DOJ person is?

4 A No.

5 Q Do you know if it was Kevin Carver, who was  
6 the deputy chief of the fraud section?

7 A I was not told.

8 Q But it was somebody in the bank fraud unit?

9 A Bank fraud working group, which is the  
10 agencies that meet together weekly or periodically,  
11 and they go over common targets, those kind of  
12 things. The topic of the conversation was to find  
13 out.

14 Q Which conversation are you talking about?  
15 The DOJ?

16 A When I received the phone call, the person,  
17 one of those three people had just come back from the  
18 bank fraud working group meeting, and at the bank  
19 fraud working group meeting, somebody at DOJ took  
20 them aside and said what the hell is going on at the  
21 RTC? And he or she said, what are you talking  
22 about? And that person responded, who is Lee Ausen?

1 And they said, I don't know, why? And they said that  
2 they had received a phone call from the field asking  
3 for information, and I believe it was to the  
4 committee chairman of the conflicts committee at DOJ,  
5 and the reason that they were upset was that they  
6 were breaching -- this phone call, by coming from the  
7 field and the RTC directly to the committee chairman  
8 was breaching all kinds of protocol.

9 Q Let's back up. This phone call, separate  
10 from the two phone calls we were talking about  
11 before, was coming from the field and RTC?

12 A Lee Ausen had made a phone call directly to  
13 a committee, I believe it was the conflicts committee  
14 or some type of executive committee and/or executive  
15 chairperson of some sort.

16 Q Committee of what agency?

17 A DOJ.

18 Q Of the Department of Justice?

19 A Yes.

20 Q And it was Lee Ausen?

21 A At main Justice. The name was Lee Ausen.

22 So, the RTC person who sits on the bank

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1 fraud working group called me and relayed the  
2 conversation that he had had with the DOJ person who  
3 sits on the bank fraud working group because they  
4 were very insulted, upset, offended that people from  
5 the RTC field office were directly contacting main  
6 Justice executive people and not going through the  
7 appropriate channels.

8 Q Do you know what was the substance of the  
9 contact between Mr. Ausen and the ethics committee  
10 person?

11 A I don't recall if at that time during the  
12 conversation I knew what it was. Subsequently, it  
13 seems to me that it had to do with a former referral  
14 that RTC had made and that the executive office  
15 supposedly had responsibility for at that time.

16 Q And it was an inquiry as to the progress of  
17 this referral?

18 A It just had to do with it. That's all I  
19 know.

20 Q It related to this referral?

21 A Right.

22 Q So the substance of the conversation is



1 objectionable, but the objection from the Department  
2 of Justice is one of procedure, of protocol?

3 A Yes, absolutely.

4 Q This Department of Justice person from the  
5 bank fraud working group was offended, in your words,  
6 that Lee Ausen had contacted the executive office of  
7 the Department of Justice directly?

8 A Yes.

9 Q Can you identify for me more narrowly what  
10 you mean by the "executive office"?

11 A No, I don't. That's what I was told, and I  
12 believe -- I believe it probably was some type of  
13 conflicts committee or ethics committee. I want to  
14 say it was ethics. I don't know. It was an  
15 executive committee person.

16 Q Why did you think it was an ethics or a  
17 conflicts person? Did you think there was a conflict  
18 or an ethical breach of some sort?

19 A No, no, no. Because at the end, this  
20 E-mail to which you just referred me to says  
21 "Ethics." I recall it being some special committee,  
22 be it some type of executive type committee that

1 notified the bank fraud working group representative  
2 that they needed to get in touch immediately with  
3 RTC's person and find out what was going on, because  
4 that kind of contact should not be occurring.

5 Q Now, do you know how this DOJ person, the  
6 bank fraud person, came to the information that there  
7 had indeed been a contact?

8 A The person on the DOJ -- the DOJ  
9 representative on the bank fraud working group simply  
10 contacted the RTC person and objected.

11 Q What I meant was how did the initial  
12 conversation between Lee Ausen and the ethics person,  
13 what you have identified as the executive office  
14 person, how did that contact come to the knowledge of  
15 the DOJ representative to the bank fraud working  
16 group? Was it the same person who had this  
17 conversation with Lee Ausen?

18 A I have no idea.

19 Q It was just information relayed to the RTC  
20 that Lee Ausen contacted the executive office of DOJ?

21 A Yes. They wanted to know who he was and  
22 why he thought he had the authority to contact them

1 directly.

2 Q At the time you did not know what the  
3 substance of the contact was?

4 A No. I don't recall knowing at that time.  
5 It was just that they had contacted them directly.

6 Q Now, what did you mean -- I want to be  
7 careful about this. Your sentence that you wrote in  
8 your E-mail is "as you will remember, the ethics  
9 program director is the subject of the phone call we  
10 received from Washington two weeks ago that began our  
11 review of the Madison referrals."

12 "As you will remember." Did you have a  
13 conversation with Julie Yanda or Phil Adams regarding  
14 this information that you have just testified about?

15 A I told Julie that I had received a phone  
16 call from Greg, Carl or Tracy. As I am writing this,  
17 it is simply a reaction to a cc that he had on the  
18 bottom of his letter, which was normally not on any  
19 referral letter.

20 I am putting it all together as I am simply  
21 responding back to Julie saying the intention of that  
22 comment is I believe this is exactly who it was that

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1 they were referring to two weeks ago when we got the  
2 phone call when we started this mess.

3 Q Just for the record, the letter you are  
4 referring to is the transmittal letter dated  
5 October 8, 1993 of the criminal referrals that we  
6 were talking about previously, and it was cc'd to  
7 Donna Henneman?

8 A I don't know if it was October 8th, but  
9 whatever letter it is from --

10 Q The transmittal letter to the United States  
11 Attorney Paula Jean Casey?

12 A Yes, that's it.

13 Q And it was cc'd to special agent in charge,  
14 Steve Irons, FBI, and also to Donna Henneman, ethics  
15 program director?

16 A Yes.

17 Q Seeing this cc line was what triggered in  
18 your mind the conversations?

19 A Yes.

20 Q You did have conversations with Ms. Yanda  
21 and Mr. Adams at the beginning of the legal review  
22 with respect to the contact?

1 A I doubt that I said anything to Phil about  
2 it. It was simply in my mind at the time that the  
3 phone call came in simply another act of a lack of  
4 control over the investigators.

5 Q Did you remember having conversations with  
6 Ms. Yanda regarding the contact?

7 A I believe I told her about it.

8 Q You told her about it. But did you  
9 identify to her the -- did you identify to her the  
10 substance of the contact, what you have just  
11 testified to in the last few minutes?

12 A I told her that I had received a phone call  
13 from the RTC liaison in Washington because I just had  
14 gotten back from a meeting that morning with the DOJ  
15 representative on the bank fraud working group and  
16 that DOJ was very upset because Lee Ausen was making  
17 phone calls directly to their executive office and  
18 once again wanted to know why he was not following  
19 chain of command.

20 Q As you said, subsequently you found out it  
21 related to a prior criminal referral?

22 A Yes.

1 Q This criminal referral related to Madison  
2 Guaranty?

3 A Yes.

4 Q This was CR 0004?

5 A I believe so. I don't recall what number  
6 it was.

7 Q The first criminal referral relating to  
8 Madison Guaranty?

9 A Yes.

10 Q That was referred to the U.S. Attorneys in  
11 Little Rock and found its way to the main Justice  
12 department in Washington?

13 A I assume so, yes.

14 Q Now, going beyond a little bit. "The  
15 ethics program director is a subject of a phone call  
16 we received from Washington two weeks ago that began  
17 our review."

18 A No. I put "that began our review." What I  
19 meant to say was that began at the beginning of our  
20 review, the same time the phone call came in. It was  
21 all at the same time. Everything happened at once.  
22 We began our review. That came in. Different things

1 were happening while we were doing our review.

2 Q So contrary to the implication of the  
3 language of your E-mail, you did not mean to imply  
4 any causal relationships between the phone call from  
5 Washington which you received and the commencement of  
6 your review?

7 A That is correct.

8 Q Was there any linkage or causal  
9 relationship between the call you got from Washington  
10 and the conduct of your review?

11 A No.

12 Q So simply your testimony is that your  
13 sentence here is simply a mistake, that it was --  
14 that the call came in contemporaneous with your  
15 review but did not prompt your review?

16 A That is correct.

17 Q Actually, I wanted to go back a little bit  
18 to the June 1993 meeting you had with the Assistant  
19 U.S. Attorney in the Little Rock office.

20 A It wasn't Little Rock.

21 Q It was not in the Little Rock office?

22 A No, it was not.

1 Q Do you know which office this Assistant  
2 U.S. Attorney was from?

3 A The Northern District of Oklahoma.

4 Q The substance of this meeting was a  
5 complaint by the AUSA on the quality of the referrals  
6 generated by a specific group of investigators within  
7 the Kansas City unit, namely Jean Lewis among others?

8 A Yes.

9 Q And you testified earlier that the AUSA  
10 will not look at another criminal referral that is  
11 not cleared by you, that has not gone through a legal  
12 review by you?

13 A Yes.

14 Q Did he say that -- what was the exact  
15 request which he made to you with respect to the  
16 handling of criminal referrals drafted by these  
17 specific investigators?

18 A It wasn't so much a specific request. It  
19 was a two-hour conversation listing his frustration,  
20 anger at having to waste his time and money from his  
21 budget in tracing down facts that should have been  
22 given to him from the get-go, in comparing numbers.

1 In one situation it was an allegation of  
2 theft out of a subsidiary mobile home park, of air  
3 conditioners from the actual mobile homes, and all it  
4 took was legwork, but the OIG agent and the FBI agent  
5 spent 2-1/2 days in approximately 110 degree weather  
6 crawling underneath mobile homes matching the serial  
7 numbers with the air conditioners and the mobile  
8 homes, and lo and behold all of them were there.

9 Q Based upon these complaints regarding  
10 specific facts and information not in previous  
11 referrals, what was his request?

12 A He said make sure every fact is there, make  
13 sure the evidence that you have is attached to the  
14 referral so that we know you have done your legwork  
15 before we accept any more referrals.

16 Q They would not accept any referral from  
17 this group of investigators without your explicit  
18 clearance?

19 A He was going to check with me and/or the  
20 legal -- the attorneys involved to make sure we also  
21 thought there was a basis for criminal referral  
22 before he would ever proceed with further

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1 investigation of referrals from this group of  
2 investigators.

3 Q He gave you veto power as to whether or not  
4 to conduct an investigation based on a referral?

5 A No, I don't think he was giving us veto  
6 power. He wanted to know if we thought there was  
7 anything there. He wanted to make sure we had done  
8 all of our legwork before he did our legwork for us.

9 Q With respect to the nine criminal referrals  
10 that you subsequently had a chance to actually  
11 officially review, was that legwork done?

12 A No.

13 Q Those are concerns that led you to the  
14 questions and concerns that you listed in your  
15 13-page memo of October 17, 1993?

16 A Yes.

17 Q Including concerns relating to criminal  
18 referral CR 0210 which your notes indicated was  
19 probably a good referral, yet you had several  
20 questions relating to that referral?

21 A Yes.

22 Q But yet, the criminal referral was



1 transmitted on the same day that you submitted your  
2 13-page legal review?

3 A That wasn't my responsibility.

4 Q And yet this -- to the best of your  
5 knowledge, was this criminal referral rejected out of  
6 hand simply because it was not cleared through your  
7 office?

8 A That's two different offices.

9 Q Right. So this sentiment was not shared by  
10 the Little Rock U.S. Attorney's Office?

11 A I don't know whether it was or not.

12 Q So this meeting was with just one  
13 particular AUSA in Oklahoma City -- in the Tulsa  
14 office of the --

15 A U.S. Attorney's Office. Yes.

16 Q Did you promise to conduct such thorough  
17 review and clearance of work product by these people,  
18 by these investigators to the AUSA?

19 A I told them I would do what I could. If he  
20 had questions, concerns or complaints, he needed to  
21 contact me immediately and we would do everything  
22 that we could to make sure that he got his

1 information and it was thoroughly researched and/or  
2 had complete information when he got it.

3 Q Doing what you could, but knowing that even  
4 under the terms of the guidelines of the legal review  
5 you had no substantive authority to stop a referral  
6 under your legal review?

7 A Certainly, certainly.

8 Q Doing what you could within the boundaries  
9 of the processes of legal review.

10 A Yes. If the review is complete and all the  
11 information there, it is not a problem. In the  
12 circumstance I described to you a few minutes ago  
13 where all the serial numbers actually matched the  
14 unit to the mobile home, there is no theft; hence,  
15 there should be no referral.

16 Q Let's ask you about criminal referrals in  
17 general. As I understand it, it is a referral to the  
18 U.S. Attorney's Office for further investigation, is  
19 it not?

20 A Sure.

21 Q So, it need not be -- there need not be a  
22 sufficient legal basis for prosecution or conviction

1 but simply sufficient facts to warrant further  
2 investigation?

3 A Yes.

4 Q So, legal conclusions or questions relating  
5 to whether this is a viable case or a worthwhile  
6 prosecution should not enter into whether a referral  
7 is valid to the U.S. Attorney's Office?

8 A That's right.

9 Q It is simply whether on its face the  
10 legal -- the criminal referral alleges sufficient  
11 facts to warrant further investigation?

12 A Yes.

13 Q Knowing that further investigation may  
14 develop new facts leading to criminal charges or  
15 exonerating the parties from criminal charges?

16 A Certainly.

17 Q So in and of itself, it is not a review for  
18 prosecution, but it is a review for probable cause in  
19 the common parlance of an attorney?

20 A I don't think you have to have a standard  
21 of probable cause. I think the referral itself says  
22 reasonable suspicion. But if the facts are within

1 our control, we ought to give them every fact and  
2 backup documentation that states our claim.

3 Q Let's talk about the backup documentation  
4 for a minute. You referred earlier to a subpoena  
5 that you received in September sometime from the U.S.  
6 Attorney's Office relating to a matter involving  
7 Madison Guaranty.

8 A Yes.

9 Q And this subpoena you testified was too  
10 broad.

11 A Yes.

12 Q This matter as you testified earlier, this  
13 subpoena related to Dean Paul, Limited?

14 A We found that out later. We didn't know  
15 that at first. It simply said any and all  
16 documentation arising out of Madison Guaranty from  
17 1980 through the demise of the institution, which  
18 means every document generated out of that  
19 institution, which are hundreds of thousands of  
20 documents.

21 Q Subsequent to receiving this broad  
22 subpoena, Phil Adams had a conversation with Fletcher

1 Jackson at the U.S. Attorney's Office in order to  
2 limit the scope of the subpoena?

3 A Yes.

4 Q And was a subsequent subpoena reissued to  
5 your office?

6 A Yes.

7 Q And that was narrower in scope?

8 A Yes and no. Yes, it said "please send us  
9 the Dean Paul, Limited file," and then tacked on the  
10 bottom was "and all Madison Guaranty documents from  
11 1980 through the demise of the institution."

12 Q Your problem with that request was that it  
13 was too much record for you to provide?

14 A Yes. We can't get an entire institution  
15 together in the amount of time that we negotiated  
16 with them. Every document, does that mean every  
17 document in every attorneys' desk? What documents  
18 are you looking for? It wouldn't stand up in a court  
19 of law. It is a blanket subpoena, period.

20 Q My concern was simply that you had stated,  
21 you had testified that it was in the RTC's interest  
22 to provide the full facts and supporting

1 documentation for all the criminal referrals.

2 A Well, certainly. Full facts, that's  
3 correct, as to that allegation. But if the documents  
4 themselves that are attached to the referral do not  
5 reflect the same fact scenario that the referral  
6 states, then something has got to change.

7 Q And you felt that this subpoena was overly  
8 broad even though you did not know what the  
9 underlying basis for the subpoena was?

10 A No, no. You are mixing apples and  
11 oranges.

12 Q You testified that you did not know until a  
13 subsequent time that this subpoena was in response to  
14 a criminal matter relating to Dean Paul, Limited;  
15 correct?

16 A After Phil Adams had his phone conversation  
17 with AUSA Jackson and we knew exactly what they were  
18 wanting.

19 Q That was they are conducting an  
20 investigation with respect to Dean Paul, Limited?

21 A That's correct.

22 Q When you received the subpoena from the

1 Department of Justice, your attitude was it was too  
2 broad, we won't comply, we have to talk to the  
3 Justice Department further?

4 A Absolutely.

5 Q It was the basis of that conversation that  
6 the subpoena was narrowed?

7 A Yes, on the one that came in at the end of  
8 August before any referral had gone out and we didn't  
9 know about the referrals, we asked what is it that  
10 you really want. If you want us to respond and  
11 reply, what do you want from us. When you say every  
12 document of an institution, there are Privacy Act  
13 problems, Right to Financial Privacy Act problems,  
14 there are institution documents, there are contractor  
15 documents, there are legal documents, RTC-generated  
16 documents. What documents are you referring to and  
17 what is it you are really wanting. We want to be  
18 able to help you, Mr. AUSA, but what is it you really  
19 want.

20 Q This is the substance of a conversation  
21 Phil Adams had with AUSA Jackson?

22 A We have this type of conversation routinely

1 if we get an overly broad subpoena from any AUSA.

2 Q This was the specific conversation that  
3 Phil Adams had with AUSA Jackson?

4 A As I understand it.

5 Q Subsequent to this conversation, the  
6 subpoena was narrowed somewhat?

7 A It did list the item to which he referred  
8 in the phone conversation and tacked on the bottom  
9 was the original statement, any and all documents out  
10 of the institution.

11 Q Did you produce any documents in response  
12 to the narrower subpoena?

13 A Yes.

14 Q Was that sufficient for the Justice  
15 Department's purposes?

16 A As for the Dean Paul, Limited file, yes.

17 Q Did there come a time when you were  
18 involved in another set of subpoenas relating to  
19 Madison Guaranty Savings & Loan Association?

20 A Yes.

21 Q Do you know the basis for these subpoenas?

22 A I assume and recall that it was the

1 referrals, the nine or however many Madison  
2 referrals.

3 Q And these subpoenas were issued subsequent  
4 to those referrals -- subsequent to the time at which  
5 those referrals were transmitted over to the Justice  
6 Department?

7 A I don't recall that as being true.

8 Q Do you know approximately when you received  
9 the first subpoena -- the first of the second set of  
10 subpoenas?

11 A May I refer to the chron, please?

12 Q Please.

13 (Witness examined the document.)

14 A I don't believe I received another  
15 subpoena. I don't recall. I know there was a series  
16 of subpoenas and the subpoenas were limited to  
17 certain transactions, including the Dean Paul,  
18 Limited. It seems to me that we also received  
19 another subpoena, and the Dean Paul, Limited portion  
20 we responded to within the time allotted, and they  
21 kept the AUSA or Justice -- when I say Justice, I  
22 mean both FBI and AUSA together -- insisted that the

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1 original subpoena back in August asking for any and  
2 all documentation was then valid once again and that  
3 we had not responded with all documentation. This  
4 was after they had gotten the referrals.

5 Q There was a third subpoena?

6 A I don't know if there was a third subpoena  
7 or not.

8 Q There was communication of some sort?

9 A I don't recall, because by this time things  
10 were getting pretty hairy.

11 Q You knew there was a pending subpoena for  
12 all records relating to Madison Guaranty Savings &  
13 Loan Association?

14 A Yes.

15 Q As a matter of fact, there were two  
16 subpoenas for all records relating to Madison  
17 Guaranty Savings & Loan Association?

18 A Yes.

19 Q The second subpoena had the same language  
20 that the first subpoena had to which you objected?

21 A Yes.

22 Q By things getting hairy by this time, what



1 did you mean?

2 A Well, my legal review was over. I was  
3 getting back into my own cases. I had several  
4 deadlines and statute of limitations running. In the  
5 meantime, the production of the documents were a  
6 problem in that we were trying to keep control of the  
7 documents so that we could provide the U.S. Attorney  
8 a rolling production of these documents because it  
9 would be the first sizable document production that  
10 we had had to this magnitude.

11 So we assumed that the documents would come  
12 to legal. We had a room set up for it. We had  
13 already obtained all the commercial litigation files  
14 pertaining to Madison and put them in that room, and  
15 the Borod & Huggins files. All the files we had in  
16 our possession on the legal side into this room,  
17 expecting now all the contractors, the loan  
18 servicers, every other division of the RTC which was  
19 spread out among four different sites in Kansas City,  
20 they would start filtering in and then we would put  
21 them in a room and the AUSA could start looking at  
22 them as they came into the office.

1 Q So by saying at the beginning of your  
2 answer that my legal review was over --

3 A Of the referrals.

4 Q Of the referrals. So are you making a  
5 distinction between your legal review of the  
6 referrals and your responsibilities with respect to  
7 the subpoena?

8 A Absolutely.

9 Q Both fall within your purview as the  
10 criminal coordinator?

11 A Yes.

12 Q That is, you have to conduct a legal review  
13 of criminal referrals that fall within your  
14 supervisory scope and you have to respond to  
15 subpoenas relating to matters falling within your  
16 supervisory scope?

17 A Yes.

18 Q In this instance, it happens both matters  
19 relayed to Madison Guaranty Savings & Loan  
20 Association at about the same time?

21 A Yes.

22 Q So you had no basis for conducting a quote,

1 unquote, "legal review" of any document production as  
2 such?

3 A Absolutely not.

4 Q You were simply coordinating efforts in  
5 order to respond to a subpoena by the AUSA and  
6 coordinating the efforts of investigators or other  
7 people within the RTC in order to respond to that  
8 subpoena?

9 A That's correct.

10 Q And all the records as I understand it are  
11 collected within one room?

12 A We set up a room with a lock so that we  
13 could maintain the integrity of the document  
14 control. We set up a log as to those who would go  
15 in, who would go out. We had already obtained all  
16 the commercial litigation documents, the documents  
17 that we had obtained in our other referral review,  
18 put all of those documents in the room for the AUSA's  
19 review and then expected the documents from every  
20 other area of the RTC to start filtering in.

21 Q And I still haven't got a good sense as to  
22 what you meant when you said by this time it was

1 getting hairy. Was there a specific problem with  
2 setting up the room?

3 A No.

4 Q Was there a specific problem with respect  
5 to what you thought the subpoena meant?

6 A When I say "hairy," I just recall at that  
7 time being very busy.

8 Q So, it was a statement as to the time  
9 commitments that you were having?

10 A Yes.

11 Q Did there come a time when you became aware  
12 of any expressions of displeasure among the DOJ  
13 attorneys with respect to the speed and the quality  
14 of the production of documents in response to the  
15 subpoenas?

16 A Yes.

17 Q And approximately when would that be? Was  
18 it after the referrals were sent?

19 A After the referrals were sent.

20 Q After another communication with the  
21 Justice Department, be it a subpoena or a request  
22 with relation to records of Madison Guaranty?

1 As I understand your testimony, the  
2 Department of Justice made further contact with you  
3 or other people in the PLS section to request records  
4 for Madison Savings & Loan Association after the  
5 referral was made?

6 A Yes.

7 MR. SCHAUER: Can I just clarify? Are we  
8 speaking about the people in the Eastern District of  
9 Arkansas or the main Justice department?

10 MR. DINH: Let me get to that.

11 BY MR. DINH:

12 Q Was this communication -- this expression  
13 of displeasure was made after the second  
14 communication, second request for documents?

15 A Yes.

16 Q Do you know who made this expression of  
17 displeasure? How did you come about this  
18 information?

19 A I had phone calls from FBI agents on my  
20 voicemail to me individually, depending on the time  
21 of day and the day of the week. I had AUSAs calling  
22 me from Little Rock asking me for documents, wanting

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1 to know where we were on the document production, me  
2 assuming Dean Paul, Limited and then those documents  
3 that would be relative to the referrals.

4 I received a phone call from, I believe it  
5 was Carl Gamble who said he had received a phone call  
6 from main Justice wanting to know why the attorneys  
7 in the Kansas City office were interfering with the  
8 production of the documents.

9 I said what interference, and what are you  
10 talking about? We simply don't have the documents  
11 yet. We have everything set up, there are no  
12 documents there. They can certainly come look at the  
13 one file drawer full of documents I have to date, but  
14 I don't have any other documents for them to look  
15 at. I don't have them here. I have requested them.  
16 They are not here.

17 Q Actually, let me back up a second then.  
18 You had requested the documents -- you have set up  
19 the room and requested the documents from the various  
20 offices and entities within the RTC?

21 A Yes.

22 Q And this is in response to the subpoena

1 that stated that -- that sought all documents  
2 relating to Madison Guaranty Savings & Loan  
3 Association?

4 A There were different conversations between  
5 Phil Adams and the AUSA, because he was the one who  
6 was in conversation with the AUSA.

7 As the legal criminal coordinator, I had  
8 responded to their initial request with regard to  
9 Dean Paul, Limited and there was another subpoena on  
10 some other issue, and I don't recall what that was.

11 Q Now, by responding to the request, you  
12 meant specifically those specifically enumerated  
13 documents that were in the second subpoena,  
14 subsequent to the Jackson-Adams conversation?

15 A Yes.

16 Q But had not responded to the quote,  
17 unquote, "tag" line?

18 A That's right. Once a referral has gone  
19 out, if the referral refers to certain documents, we  
20 can certainly send those either contemporaneously  
21 with the referral or subsequently as a follow-up,  
22 either/or, which negates the necessity of a grand

1 jury subpoena on that item, which was our first  
2 concern.

3 The first subpoena came in back in August,  
4 what are you referring to, is this a referral, what  
5 are you working on, because we have to know how to  
6 respond.

7 Well, after our referral went out, then  
8 yes, there is a whole world of documents that  
9 hopefully will support that and we went ahead and  
10 commenced giving them the documents.

11 Q So, by taking this process, I just want to  
12 break down exactly what request you thought you were  
13 responding to. You stated earlier that the request  
14 in the subpoena -- actually, the command in the  
15 subpoena to produce all documents relevant to Madison  
16 Guaranty Savings & Loan Association was too broad,  
17 and you were unable and unwilling to comply with  
18 that?

19 A Yes. That was before the referral was  
20 made.

21 Q When the referral was made, then you made a  
22 subsequent determination that the initial --

1 A There were phone calls back and forth  
2 between the AUSA's office and both myself and Phil  
3 Adams, and we knew, understood that the AUSA now  
4 wanted the documents that would relate to all these  
5 referrals. There had to be a lot more because we had  
6 enough questions just from what we had that stated  
7 there had to be more documents, if in fact what they  
8 are alleging in their referrals are true.

9 Q And you set up the room?

10 A Uh-huh.

11 Q While this process was going on, you  
12 started getting phone calls from FBI agents, AUSAs  
13 and I guess contacts in Washington, D.C. regarding  
14 the pace and quality of this production?

15 A Yes.

16 Q Approximately what time has lapsed between  
17 the transmittal of the referral until October 8?

18 A Maybe a week.

19 Q So, within a week the Justice Department  
20 started making complaints about your compliance?

21 A I don't know that main Justice did. I  
22 think main Justice started probably within three

1 weeks and no more than within 30 days, because within  
2 30 days I was off the entire project. It had to have  
3 been from the time of October 8th through the 11th of  
4 November, which is approximately 30, 33 or 34 days.

5 Q November 11th of 1993 was when you were  
6 taken off the project?

7 A Yes.

8 Q Can you explain to me the circumstances  
9 surrounding that.

10 A During the week --

11 Q The record reflects that the witness is  
12 referring to her chronology.

13 (Witness examined the document.)

14 A It was the 5th -- the last work I did on it  
15 was approximately November 6th of 1993.

16 Q So, between the transmittal of the  
17 referrals on October 8th and November 5th, in this  
18 approximate month period was when all of this dispute  
19 regarding the production of documents occurred?

20 A Yes.

21 Q After that, did you have any further  
22 contact with respect to the production of documents?



1 A No.

2 Q You were going to tell me the circumstances  
3 surrounding your removal from the case.

4 A Yes. The week of November 5th, I received  
5 two or three -- I don't recall -- phone calls from  
6 Washington, D.C. RTC instructing me to simply give  
7 every document to the AUSA regarding Madison. My  
8 response each time was I would be happy to if I had  
9 documents to give them.

10 One of the subpoenas, subsequent subpoenas  
11 to the initial subpoena requested microfilm and  
12 microfiche on certain transactions out of Madison  
13 Guaranty.

14 Q Uh-huh.

15 A In the process of producing the microfilm  
16 and microfiche to the AUSA, we discovered that there  
17 was only one set. RTC records management rules only  
18 allows us to give the microfilm and microfiche out to  
19 a third party if we have a second set in the files or  
20 warehouse. Because we had only one set and these  
21 were the originals and there were no other documents  
22 backing up this microfilm and microfiche, we had to

1 send it out for copying.

2 We could not send it out for copying  
3 because the contractor with whom we contracted this  
4 out, their contract was up and the BOA was now  
5 extinct, or whatever the word is. So they had to  
6 completely -- they were going to start resolicitation  
7 bids of people who had the ability to copy all this  
8 so that we could comply with the contracting rules.

9 I knew that this was problematic. So I got  
10 Julie Yanda to contact people in the contracting  
11 division and records management division, and they  
12 were able to do an emergency contract to whoever the  
13 contractor was so that we could get copies made  
14 immediately for this document production.

15 Q Uh-huh.

16 A During this time I went down to  
17 investigations. We discussed the document production  
18 problem. We discussed the room I had available, that  
19 I was waiting for the documents to come in, that we  
20 would be making a rolling document production  
21 available to the AUSA, no problem, everything was set  
22 up.

1 Q Can you give me the approximate date of  
2 this?

3 The record reflects that the witness is  
4 referring to her chronology.

5 (Witness examined the document.)

6 A It would probably have been November 2nd,  
7 sometime in that time. I seem to recall I was down  
8 there like the last week of October.

9 Q And then from November 2nd to November 5th  
10 was when you were removed from the case?

11 A What happened was -- from the time that I  
12 went down to the investigations to the time -- to  
13 November 5th, I received three phone calls from  
14 Washington that were prompted by calls from main  
15 Justice saying, why are your people interfering and  
16 obstructing the investigation?

17 By the third phone call, I had figured out  
18 that something was very wrong. It took me long  
19 enough. So I picked up the phone and called Lee  
20 Ausen. Actually, I called Jean Lewis first. She was  
21 not in.

22 Q Uh-huh.

1 A So I picked up the phone, called Lee. This  
2 was a Friday night, at approximately 4:30. I asked  
3 him if Jean was available. He said she was out. I  
4 then told him the substance of the phone calls I had  
5 been receiving and I wanted to know what documents  
6 she had in her possession, because one of the phone  
7 calls referred to documents that she had in her  
8 office and detailed a few of those.

9 Q This was around November 5th?

10 A Yes, around November 5th.

11 So, I got to thinking, how do they know  
12 what is on her desk? How do they know to ask for  
13 these specific documents when I had never seen these  
14 documents?

15 So, that's why I picked up the phone to  
16 call her.

17 Q It raised the question in your mind whether  
18 the investigators had been communicating with FBI  
19 agents?

20 A Yes.

21 Q Is that improper?

22 A Well, it wasn't just the FBI. It was the

1 AUSAs.

2 Q It could have come from the FBI to the  
3 AUSAs, could it not?

4 A That wasn't what we were getting from the  
5 AUSAs.

6 Q Is it improper to talk to the AUSAs?

7 A At this time, it was not proper.

8 Q What do you mean "at this time"?

9 A There had been enough miscommunication that  
10 the request had been specifically made:

11 investigators, you may communicate with the FBI  
12 agents, but the attorneys will communicate with the  
13 attorneys over at Justice.

14 Q At whose request was this?

15 A This was from the manual, the blue ribbon  
16 manual. This was from Julie. This was from -- a lot  
17 of history.

18 Q The specific request for investigators not  
19 to talk to attorneys --

20 A AUSAs.

21 Q Either at the U.S. Attorney's Office or in  
22 the Department of Justice, who made that specific

1 directive?

2 A That had been the rule since I had been  
3 there at the Kansas City office. That didn't just  
4 include AUSAs. That also included outside fee  
5 counsel.

6 Q So, this was not on the basis of any of  
7 these events?

8 A No.

9 Q It was -- so, at this time, by "at this  
10 time" you were referring not to the history of  
11 miscommunications as you were saying earlier but  
12 rather to this outstanding policy?

13 A It was the outstanding policy and it had to  
14 do with the miscommunications within the Madison  
15 review also. We would make an agreement with an AUSA  
16 to produce certain documents at a certain time. Then  
17 the FBI agent would turn around the next day and  
18 accuse us of not producing certain documents, which  
19 were not part of the agreement with the AUSA. When  
20 we would confront the AUSA with what the FBI agent  
21 said, they would say he tagged that on, I didn't ask  
22 for it.

1           So we felt like we were reporting to two  
2 different people. That was miscommunication in our  
3 eyes. In the meantime, I'm getting requests from  
4 main Justice through RTC that I am not complying.

5       Q   Why are the documents not in that room that  
6 had you designated?

7       A   I had not received them.

8       Q   Do you know where or did you subsequently  
9 come to knowledge as to where those documents were?

10      A   Yes.

11      Q   Where were those documents?

12      A   They were in the possession of the  
13 investigators.

14      Q   They were in the possession of  
15 investigators.

16           Let me refer to Bates TH 843. It is an  
17 E-mail from Lee Ausen to Richard Iorio, forwarded by  
18 Richard Iorio to Julie Yanda and then forwarded by  
19 Julie Yanda to Karen Carmichael with the comment  
20 "FYI." It is dated November 8, 1993.

21      A   This is after I discovered they had them in  
22 their possession.

1       Q   November 8, 1993 is after --

2       A   Yes.

3       Q   When did you discover --

4       A   The 5th.

5       Q   That was when you called Jean Lewis but  
6 talked to Lee Ausen?

7       A   Yes. I asked if she had any documents in  
8 her possession, A; B, what documents she had in her  
9 possession; and C, what inventories do the people at  
10 Justice keep referring to that she has in her  
11 possession. I had not been given any inventory.

12           We only have inventories of I boxes, which  
13 are investigation boxes typically on most  
14 institutions, which the investigators make the night  
15 of intervention and they keep their own little  
16 inventory.

17           The inventory to which the AUSA was  
18 referring to was much more exhaustive than simply the  
19 investigator's boxes. I asked them what they were  
20 referring to.

21      Q   Now, subsequent to that conversation --  
22 during that conversation with Lee Ausen, when you

1 asked these questions was when you discovered they  
2 had files at the investigations unit in the Kansas  
3 City office?

4 A He said he would get back to me. I said I  
5 had to have the answer within 30 minutes. At 4:45 he  
6 called me and said Jean has 30 boxes in her office  
7 and there are approximately five different  
8 inventories. I asked him how many boxes of documents  
9 that included, and he gave me whatever number it was,  
10 which was hundreds. I asked him where all those  
11 documents were, and he said, oh, well, we have a room  
12 downstairs with all of them in it.

13 That was after he brought the inventories  
14 to my office. He was sitting in my office and I  
15 asked him those questions.

16 Q He had the inventories of the documents?

17 A They had the documents, the boxes, all the  
18 documents for well over a year.

19 Q In a similar office like you had before?

20 A Yes.

21 Q Let me refer you to the second paragraph of  
22 this E-mail and can you read for me the second

1 sentence of that second paragraph, the one I have  
2 highlighted for your convenience. This is the  
3 original message sent by Lee Ausen?

4 A "Our normal procedure is to segregate the  
5 records and store them in a secure place in  
6 anticipation of needing copies" something "these  
7 supporting documents for responses to grand jury  
8 subpoena requests."

9 Q He was describing the procedures whereby  
10 the records were segregated into a separate room to  
11 which you were referring?

12 A Yes and no.

13 Q What else?

14 A He is referring to documents the  
15 investigators use in preparation for a referral.  
16 That is usually a limited amount of documents. But  
17 what they had already done, which is never done until  
18 after we get a huge subpoena from Justice or whatever  
19 the case may be, maybe it is a court order from a  
20 judge, they had asked for every document.

21 Investigations does not go out and ask for  
22 every document from every contractor and every



1 portion of the RTC and secure it. There is no need  
2 for it. It is usually specific to an investigation,  
3 either target transaction or a certain borrower, not  
4 every contractor in every area of the RTC.

5 Q It is not done -- are you suggesting that  
6 this is improper in any way?

7 A Yes, it is improper. That's what the  
8 purpose of the subpoena is. When the subpoena comes  
9 in, the subpoena coordinator, Bridgette Murphy, is  
10 the one who sends out the request to every area of  
11 the RTC that may have access to the responsive  
12 documents to the subpoena. Investigations retains  
13 those portion of documents that were used in their  
14 referral.

15 But what they had already done was go to  
16 every area of the RTC and took every business record,  
17 every everything and kept them in this room. I was  
18 waiting for this world of documents to start  
19 filtering in when in fact they weren't responding  
20 because they had nothing. They had already produced  
21 them to investigations nine or 10 months beforehand.

22 Q Nine or 10 months beforehand, before any

1 subpoenas were issued while they were conducting  
2 their investigation?

3 A Yes, yes.

4 Q Could it be that these requests were  
5 relevant to the conduct of their investigation?

6 A I have no idea.

7 Q Nine referrals subsequently came out of  
8 that investigation a year later; correct?

9 A Yes.

10 Q And the scope of these referrals varied to  
11 a range of topics relating to Madison Guaranty?

12 A Yes.

13 Q You do not know whether these documents  
14 that were requested nine months earlier were relevant  
15 to the criminal referral?

16 A I doubt if the entire world of every  
17 document in Madison Guaranty was absolutely relevant  
18 to the nine referrals.

19 Q Oh, but -- isn't it only by going through  
20 irrelevant documents that you are going to be able to  
21 find relevant documents? How would you know what  
22 documents are relevant?

1 A No, that's not the point. The point is the  
2 investigator had retained RTC business records and  
3 Madison records and every other record that obviously  
4 didn't have anything to do with the referrals.

5 Q You are suggesting that after they have  
6 done their investigation, they should keep only those  
7 records that directly relate to referrals and send  
8 everything back?

9 A Yes. That's how it always happened.

10 Q It was improper for them to retain the  
11 record in anticipation of a grand jury subpoena?

12 A No, no, no. Both. Usually any document  
13 that then does not pertain to the referral goes back  
14 so that the contractor can continue working on the  
15 loan or -- you don't ask for every single bankruptcy  
16 in Madison Guaranty, every single subcontractor in  
17 Madison Guaranty, every RTC internal document for  
18 Madison Guaranty. What does that have to do with the  
19 referral itself?

20 Q The referral is the end product of the  
21 investigation; right? At the beginning, did you know  
22 that there were allegations that would result --

1 A No, no. Why would you use internal RTC  
2 documents for an investigation that is supposed to be  
3 an investigation of solely preintervention work? RTC  
4 investigations is only responsible for an  
5 investigation of the failed institution, period, end  
6 of conversation, not all the documents generated  
7 after intervention. That becomes the responsibility  
8 of OIG. They had asked for everything, and kept  
9 everything.

10 Q As I understand your initial description to  
11 me as to what the PLS section's responsibility of  
12 oversight over investigation was, it was to take the  
13 product of investigations and determine whether civil  
14 sanctions should -- civil liability should attach or  
15 whether you should pursue actions for such civil  
16 liability. And in the criminal context, PLS  
17 attorneys served as the criminal coordinator.

18 Do they involve -- do those assignments  
19 responsibilities also include the day-to-day  
20 management of investigations conducted by the  
21 investigations unit?

22 A I'm sorry. I lost you on that last part.

1 Q It seemed like you had control or oversight  
2 authority at the tail end of the investigation. The  
3 product that comes in from the investigations unit  
4 would be filtered through your unit. Did that  
5 supervisory authority also relate to the actual  
6 conduct of specific investigations by the  
7 investigations units?

8 A I don't know how to answer your question.

9 Q Do you have day-to-day -- do you have  
10 day-to-day supervisory authority over the specific  
11 investigators?

12 A As it relates to your case, yes.

13 Q And as it relates to your case --

14 A Those cases for which I am responsible.

15 Q Does it become your case before a referral  
16 is transmitted for you review?

17 A Well, I wasn't aware that there was a  
18 referral going out or being worked on. Typically the  
19 attorney who is assigned to that institution knows of  
20 the referral. In this case, it was April Breslaw.  
21 And I don't know whether or not the investigator or  
22 investigators had been in contact with her, letting

1 her know what they were doing.

2 Q Of course the only contact you had with her  
3 was with respect to the Borod & Huggins report; you  
4 received no other information from her, so you did  
5 not ask her regarding the specific conduct of the  
6 investigation.

7 A That's right.

8 Q The point of my specific question is  
9 whether you have day-to-day supervisory authority  
10 over the investigators with respect to how they do  
11 their work.

12 A As it relates to the claims you are working  
13 on, yes.

14 Q When you are reviewing their criminal  
15 referrals?

16 A No. You asked me that in the context of  
17 the civil investigation, yes. As far as the criminal  
18 investigation, if it interferes or it competes with  
19 my civil case, yes. We talk about it. We say what  
20 is going to jeopardize maybe a bond claim versus an  
21 insurance policy versus a fraud claim, yes. We talk  
22 about competing interests because there is always

1 competing interests within different claims areas.

2 Q Do they report on matters of criminal  
3 investigation to you?

4 Let's say they interview a witness or  
5 request a certain document. Would they report that  
6 to you?

7 A They should. My gosh, yes.

8 They prepare a plan of investigation that  
9 is given to the attorney quarterly --

10 Q This is criminal investigation?

11 A Criminal is part of the POI. You are to  
12 know what is going on, yes, if you are the attorney  
13 responsible for it.

14 Now, as the legal criminal coordinator, I  
15 had no idea any of this was going on until I actually  
16 got the tangible referrals or immediately  
17 beforehand.

18 Q But until you get the criminal referral, do  
19 you have a basis to determine whether or not what  
20 documents are relevant to the investigation?

21 A You would think so, yes. I mean, you know  
22 whether or not you have sold the item, maybe the

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1 underlying note. You know you are going to have to  
2 determine the amount of your loss. You want to know  
3 who we sold the note to.

4 Q You find this out by going through  
5 documents?

6 A Sure, or requesting specific documents.

7 Q You request documents and then you go  
8 through them to discover underlying conduct, and if  
9 that underlying conduct happens to be criminal --

10 A No, no, no. The underlying conduct had to  
11 have occurred prior to intervention. Then the only  
12 documents that we request afterwards is usually from  
13 accounting to find out what kind of hit the  
14 institution took on it.

15 Q Are you suggesting that subsequent  
16 investigations of criminal misconduct relating to a  
17 savings and loan association is limited only to  
18 matters that led to its intervention?

19 A No, that's not what I said.

20 The criminal referral from the  
21 investigations department only pertained to those  
22 acts that occurred prior to RTC intervention,

1 period.

2 Q And those acts -- there could be a myriad  
3 of criminal acts in relation to that savings and loan  
4 association?

5 A Yes.

6 Q Potentially there could be a limitless  
7 universe of criminal acts?

8 A Well, within the world of documents that we  
9 obtained in the intervention.

10 Q Only by reviewing the world of what is  
11 deemed to be relevant documents do you determine what  
12 is the criminal conduct?

13 A You have to have an idea of what is there.  
14 You don't go through every institution and start  
15 looking at every single document to see if in fact  
16 this is criminal.

17 You have a lead. We get a supervisory  
18 memorandum from OTS. It usually lists items that  
19 need to have a further look into, maybe they have  
20 pending investigations on certain areas and they ask  
21 us to take it on from that point forward. You look  
22 at the loan loss charts to find out what the large

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1 loan targets were. That gives you a red flag that  
2 there may be criminal acts within that situation.  
3 That's what you look for.

4 Q And that was -- and you felt that the  
5 process of collecting all the documents by the  
6 investigators in the investigations unit was  
7 excessive?

8 A Yes.

9 Q And not only was it excessive as an initial  
10 matter, it was improper for them not to return the  
11 documents after they have made the criminal  
12 referrals?

13 A Because they ask for more than just what  
14 was in the criminal referrals. They asked for all  
15 our contracting files, RTC-generated files. That's  
16 what was so odd. I was waiting for every area of the  
17 RTC to start responding, and they weren't there yet.  
18 I hadn't gotten anything yet. It was because they  
19 had done this 10 months beforehand and kept them all,  
20 not saying a word.

21 Q Independent of any legal review?

22 A That's right.



1 Q Independent of any supervision on your  
2 part. As a matter of fact, 10 months before there  
3 was no legal review mechanism in place because it was  
4 only established by the June 17, 1993 memorandum by  
5 Jim Dudine; right?

6 A They also had not done any referrals.

7 Q That was at the beginning and continuation  
8 of their investigation?

9 A I don't know if it was the beginning or  
10 continuation of it. All I know is they had requested  
11 all of these from every area of the RTC and kept them  
12 in a locked room. That is unusual. It is not in the  
13 normal course of business. That's all I'm saying.

14 Q It is not even in the course of an  
15 investigation?

16 A If the investigation -- you have to have a  
17 reason for asking for certain documents, not the  
18 entire world of every document both within the RTC  
19 and the failed institution. That's unusual. There  
20 should be at least one or two documents that one of  
21 the areas of the RTC that generated would not have  
22 that would be responsive to their investigation, for

1 heaven sakes. But they did not leave those out  
2 there.

3 They requested every single thing early  
4 on. That is out of the normal course of business.

5 Q The substantive problem you had with this  
6 initial request by the investigations unit is similar  
7 to the objection you had with respect to the two  
8 subpoenas issued by the Justice Department with  
9 respect to all records relating to Madison Savings &  
10 Loan Association?

11 A Partially. But the other part of it was  
12 that they simply did not tell legal that they had  
13 already done this and where the documents were so  
14 that we could respond responsibly to the AUSA.

15 Q Let me refer you back to the same E-mail  
16 that we were talking about earlier, the November 8th  
17 E-mail from Lee Ausen to Richard Iorio. The next  
18 page is TH 0844. Read me the second sentence of that  
19 second page.

20 A "No attempts were made to hide any  
21 information from PLS and I met at length last Friday  
22 afternoon to show and explain in detail what we have

1 available for responses to subpoenas."

2 Q "No attempts were made to hide any  
3 information from PLS."

4 A It is a good CYA statement.

5 Q CYA for the record means to protect  
6 yourself?

7 A Yes.

8 Q Why was there a need for Mr. Ausen to  
9 protect himself, as it were? Was there a suggestion  
10 that the investigations unit was hiding information?

11 A You bet.

12 Q And that suggestion or that fear was  
13 generated within PLS itself?

14 A Yes.

15 Q You were not comfortable with the degree of  
16 cooperation you were getting upon investigation?

17 A No.

18 Q What motive would there be for  
19 investigations to hide information from PLS?

20 A To circumvent legal review, circumvent any  
21 kind of second scrutiny or responsibility in  
22 complying with rules, policies and procedures --

1 Q And yet --

2 A -- including confidentiality.

3 Q And yet hiding that information from PLS in  
4 order to protect -- or in order to circumvent rules  
5 of confidentiality, among other reasons, why would  
6 there be a motive for investigations to then tell the  
7 Justice Department? As I understand the process, you  
8 are the middle man in this document production  
9 process; correct?

10 A Yes.

11 Q And I suggest -- I guess the reason why the  
12 Justice Department wanted documents from you, were  
13 hassling you for documents was because they knew  
14 documents existed that had not been produced?

15 A Or they already had documents that were  
16 produced but had not gotten the official  
17 documentation that says that legal has signed off on  
18 that says yes, pursuant to your subpoena, we are now  
19 here by transmitting XYZ documents.

20 It is one of the two. Either they didn't  
21 have the documents and needed them in order to review  
22 them or they already had certain documents in their

1 possession that did not have legal transmittal  
2 authorization with it that they could then use in a  
3 court of law.

4 Q I thought it was merely to conduct an  
5 investigation. I thought the purpose of a criminal  
6 referral is in order to pursue whether further  
7 investigation is needed, not to be used in a court of  
8 law.

9 A If they asked for additional documentation,  
10 we send it, we have to list what we sent so the chain  
11 of custody is complete.

12 Q Correct. But my point is that why were  
13 they in this one-month period calling you so often  
14 and in a sense harassing you for these documents if  
15 they already had it, they being the AUSA, the FBI and  
16 the Department of Justice?

17 A I don't know.

18 Q Could it be that they hadn't gotten it but  
19 would like the information?

20 A Yes, that could have been.

21 Q And from what I understand from your  
22 testimony, your fear is that the reason why they know

1 that there are relevant documents within the control  
2 of the RTC and yet has not been produced is that  
3 somebody was communicating this information to the  
4 Department of Justice?

5 A That's what they told us over the phone,  
6 yes.

7 Q This somebody was investigations?

8 A They said specifically Jean Lewis.

9 Q I come back to my original questions. What  
10 possible motive could investigations have if their  
11 desire is to get the documents to the Department of  
12 Justice as expeditiously as possible to withhold them  
13 from your control so that they can be ultimately  
14 produced?

15 A I don't know. They did not give them to us  
16 so that we could produce them. They knew the request  
17 was out there. We were getting the request from the  
18 AUSA and the FBI agent asking us for them. Then we  
19 started getting pressure from main Justice why we  
20 hadn't produced all the documents. I don't know.

21 But I do know once I simply asked do you  
22 have an indices, do you have certain boxes in Jean's

1 possession, the answer was yes. And within the week,  
2 they were all produced. I don't understand it.

3 But in turn, when I said why have you been  
4 withholding these, oh, we haven't been withholding  
5 them. Why didn't you tell me about the indices? Why  
6 didn't you tell me about the boxes that were all  
7 relevant to the subpoena? All I got was just an I  
8 got to go, I don't know what Jean has been talking to  
9 them about, I don't know. This was at 5:30. It was  
10 already dark or maybe 6:00 in the evening by that  
11 time on Friday night.

12 I spent the evening and the next day going  
13 back through my records trying to find out what was  
14 going on, and I compiled an E-mail or composed an  
15 E-mail to Carl Gamble because he was the one who was  
16 fielding the calls from main Justice letting him know  
17 what happened and why I had not been responsive.

18 So I sent that to him and by Monday  
19 morning, I had been taken off the project.

20 (Recess.)

21 BY MR. DINH:

22 Q During this period, did you have any

1 communication, contact or -- any communication or  
2 contact with Webster Hubbell?

3 A No.

4 Q Do you know of anybody within the  
5 Resolution Trust Corporation in whichever division  
6 who had any contact or communications with Webster  
7 Hubbell?

8 A No.

9 Q Have you subsequently found out of any such  
10 contact?

11 A No.

12 (Discussion off the record.)

13 BY MR. DINH:

14 Q On the record again. You were removed from  
15 the case on November 5, 1993?

16 A No. That was the last work I did on it. I  
17 was removed Monday morning, the 8th.

18 Q The 8th of 1993. By "removed," does it  
19 also entail that you were recused from the case? You  
20 weren't blocked in any way from information regarding  
21 the case?

22 A Not that I know of.

1 Q It was simply an allocation of resources  
2 that the case had now been assigned to another  
3 attorney?

4 A Well, not really. My responsibilities were  
5 primarily over. It was simply the matter of the  
6 document production which usually the attorney  
7 handling that institution was responsible for.

8 So, officially Phil Adams took sole  
9 responsibility. He simply was not going to  
10 coordinate it through me any longer because the  
11 agreement between Julie Yanda and Richard Iorio was  
12 that Jean Lewis had to be taken off the case and in  
13 turn, fine, you take Karen Carmichael off the case.  
14 She felt it was a giveaway, no problem. My  
15 responsibilities were primarily over.

16 Q You were replaced by Mr. Adams? And do you  
17 know who replaced Jean Lewis on the other end?

18 A No.

19 Q But you kept -- Phil Adams is your  
20 colleague at Kansas City?

21 A Yes.

22 Q You kept in touch with him on the case?

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1 A No.

2 Q Did you talk to him at all about the case?

3 A No.

4 Q Did you talk to anybody about the case?

5 A No.

6 Q Any matters relating to Madison subsequent?

7 A No, not until January of '94.

8 Q When you were subsequently interviewed by  
9 Mr. Fiske?

10 A No.

11 Q What was the occasion in which you were  
12 reacquainted with Madison Guaranty?

13 A The Dallas office asked Julie if I could be  
14 transferred to Dallas. They were shorthanded. They  
15 needed more people. They had talked to me earlier,  
16 if I would be interested in going down to Dallas. I  
17 have family that lives there.

18 In anticipation of me moving to Dallas, I  
19 went down for the quarterly case reviews. That's  
20 where all the attorneys sit in with a supervising  
21 attorney in the investigations division and you go  
22 over every case that you have, where it is, what's



1 happening, how much money is spent, what it looks  
2 like and what you plan to do in the next 90 days.  
3 They thought that would be a good way for me to get  
4 up to speed on cases that I would probably be taking  
5 over.

6 The morning that I arrived at the Dallas  
7 office, the Washington, D.C. office contacted the  
8 Dallas office and asked them if they had any attorney  
9 available to go to OTS and start, A, copying all OTS  
10 documents on Madison Guaranty, and B, review all  
11 documents in OTS's possession of Madison Guaranty.  
12 The OTS office that was responsible for Madison  
13 Guaranty is located in Dallas. Because the quarterly  
14 case reviews were going on, every attorney had to be  
15 present to discuss their own cases. I was the only  
16 one not assigned any cases.

17 So, because of the agreement that Julie had  
18 with Mr. Iorio, they contacted Mr. Iorio and told him  
19 the situation and told him the documents had to be in  
20 Washington ASAP and that we would be working around  
21 the clock to get these documents to Washington.  
22 Would it be all right if I supervised the copying of

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1 those documents for Washington's review. He said  
2 yes. Within the hour, I was at OTS and we began the  
3 document production to Washington, D.C. regarding OTS  
4 documents.

5 Q And this is in January of 1994?

6 A January 31, 1994.

7 Q This was when there -- can you explain to  
8 me why there was a rush to get the OTS documents to  
9 Washington, D.C.?

10 A The statute of limitations at that time on  
11 civil fraud cases was going to expire, I believe, the  
12 22nd of February 1994. And if in fact there were any  
13 fraud cases remaining in the institution, then RTC  
14 wanted to go through the documents one more time and  
15 make sure that there is nothing that needed to be  
16 filed before that time.

17 Q Right.

18 A They hired the Pillsbury, Madison firm to  
19 do that review, and they needed OTS documents as part  
20 of that investigation. I simply oversaw the document  
21 retrieval from OTS.

22 Q OTS documents were sent to RTC in

1 Washington, D.C.?

2 A Yes.

3 Q And not to the Department of Justice?

4 A No.

5 Q Do you have any knowledge with respect to  
6 any OTS documents or their production to the  
7 Department of Justice?

8 A Yes. Within two weeks of doing all of that  
9 copying, we received a grand jury subpoena from  
10 Fiske's group asking for copies of all the OTS  
11 documents. No, I'm sorry. That's not true.

12 OTS had already received a subpoena for all  
13 those documents from Fiske's group.

14 Q Sometime in January?

15 A Because they were in one end of the  
16 building doing their copying of the documents and we  
17 were in the other end of the room doing our  
18 documents.

19 Q So the production was simultaneous?

20 A Oh, yes.

21 Q Did you coordinate the production at all  
22 between the OTS and DOJ?

1 A No.

2 Q Your involvement was simply with the OTS  
3 production -- the production of OTS records to the  
4 RTC in Washington, D.C.

5 A That's correct, yes.

6 Q Did you have any prior knowledge with  
7 respect to any prior production of OTS documents to  
8 the Department of Justice?

9 A No.

10 Q Prior to this January 1994 request?

11 A No.

12 Q It was merely by serendipity that you were  
13 there?

14 A Yes. I was the lucky one again, thank  
15 you.

16 Q Let me refer you to your chronology and  
17 refer you to page 12 of that chronology, Bates  
18 stamped KC 0041S.

19 MR. ENDLER: Just so the record is clear,  
20 this is a chronology that was prepared by someone  
21 else, that it is quite clear.

22 MR. DINH: I meant "your" in the collective

1 sense, being the Kansas City RTC.

2 THE WITNESS: By this time, I was probably  
3 in Dallas.

4 BY MR. DINH:

5 Q This would be in -- by page 12 would be  
6 November 22nd, 1993.

7 A All right. This was after I was taken off  
8 the project.

9 Q Can I ask you to read the first sentence of  
10 the last paragraph there, the continuation  
11 paragraph. Can I ask you to read that for the  
12 record?

13 A "Donohue, LRI, JFY, PJI confer out of  
14 presence of DOJ representatives."

15 Q The next sentence?

16 A "Donohue suggests PLS step aside and that  
17 KCO investigation should head up MXC LOA."

18 Q Now, by PLS in the second sentence, that  
19 means professional liability section?

20 A Yes.

21 Q And that KCO is Kansas City office of  
22 investigations?

1 A Yes.

2 Q Do you have any knowledge or recollection  
3 as to any conversations you may have had in relation  
4 to this particular meeting between DOJ  
5 representatives and Kansas City office?

6 A I was not involved. I have no idea.

7 Q You have not had any conversations with  
8 Ms. Julie Yanda regarding this subject?

9 A No.

10 Q No conversations with Phil Adams regarding  
11 this subject?

12 A No.

13 Q You have not talked to Richard Iorio or Lee  
14 Ausen about this subject?

15 A No.

16 MR. DINH: I'm done. Thank you.

17 EXAMINATION

18 BY MR. SCHAUER:

19 Q I know we have covered a lot of ground. It  
20 is not my intent to go over things that have already  
21 been covered, but I need to follow-up on things and  
22 may touch on some things. I will try and be as

1 efficient as possible.

2 First, I would like to just -- actually  
3 before I do that, if I could just get a little more  
4 background of your employment history. Can I get  
5 just a brief synopsis of your employment history from  
6 the period you graduated from college up until law  
7 school?

8 A I graduated from college in May of 1980. I  
9 worked for an S&L as a corporate trainer in my  
10 hometown from August of 1980 until November of 1980,  
11 when Don Nickles won the Senatorial seat here in  
12 Washington for the state of Oklahoma, his  
13 administrative assistant called me, asked me if I  
14 would be willing to come to Washington and work for  
15 the Senator. I said yes. Three days later I was  
16 working here.

17 Q You worked for Senator Nickles?

18 A Until August of 1981, when I transferred  
19 back to Oklahoma because my parents had been in a  
20 severe car accident and I had to take care of my  
21 mother.

22 Q And pardon my ignorance regarding Oklahoma

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1 politics, but what party is Mr. Nickles?

2 A Senator Nickles is a Republican.

3 Q I would like to briefly go back and discuss  
4 the events surrounding the meeting that you had  
5 testified earlier to in September, I think September  
6 22 between Mr. Adams and Ms. Lewis.

7 Did you have any conversations with  
8 Mr. Adams regarding that discussion that was about to  
9 take place prior to Mr. Adams's discussion?

10 A Yes.

11 Q What was the substance of that conversation  
12 with Mr. Adams?

13 A He told me that he had set up a meeting  
14 with Jean Lewis and wanted to know what I knew about  
15 her as he had not worked with her before. He knew  
16 that she was from the Tulsa office and that I would  
17 probably know who she was.

18 Q Did you know who she was?

19 A Yes, I did.

20 Q What did you tell Mr. Adams about  
21 Ms. Lewis?

22 A Because the request was in the context of

1 the criminal matter, I told him to be careful of the  
2 work product she was getting ready to give or was in  
3 the process of preparing because I had already had  
4 many complaints on her work from other AUSAs, and  
5 also that we had some problems earlier with  
6 Ms. Lewis.

7 Q When you mention problems or complaints  
8 from other AUSAs, I know you testified earlier to a  
9 meeting with an AUSA I think in the Northern District  
10 of Oklahoma. Are there other complaints from other  
11 U.S. Attorneys' offices regarding Ms. Lewis that you  
12 recall?

13 A Not U.S. Attorney's Offices. There was  
14 another U.S. Attorney in the same office as  
15 Mr. McLaughlin. There had been a problem in March of  
16 that year concerning the Paragould, Arkansas  
17 institution, and there was a problem with that AUSA  
18 in that she had made certain comments to him.

19 Q "She" being Ms. Lewis?

20 A Ms. Lewis, representing RTC's position when  
21 in fact that was not RTC's position, and then when he  
22 went ahead and proceeded on the course of action he

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1 intended to take, it ran head into an RTC civil case,  
2 and ultimately the RTC took a significant million  
3 dollar loss because of the information she had given  
4 him and representations she had made without  
5 conferring with the PLS attorney.

6 Q You had mentioned other complaints  
7 regarding Mrs. Lewis -- or Ms. Lewis.

8 A The other complaint was back in the Tulsa  
9 office. This was when she was known as Jean  
10 Brennan. In her former employment, prior to coming  
11 to the RTC, she worked for an institution in Texas.  
12 The president and CEO of that institution, Jarrett  
13 Woods, was under criminal indictment and trial, and  
14 as a former employee, she was asked to testify  
15 against him, which is fine. There are just certain  
16 procedures that we have to do in the RTC in order to  
17 allow that employee time off and also to represent or  
18 be a witness on behalf of the government.

19 That's all good and fine. But her  
20 supervisor in Tulsa came to my office asking if the  
21 authorization that my office had issued -- which we  
22 refer to a 309 authorization, it refers to 12 CFR 309



1 which simply says that the agency authorizes its  
2 employee to represent the agency or whatever the  
3 issue is at trial and we are aware of it -- if that  
4 authorization included paying for her time and travel  
5 in aiding the defense.

6 And that's not what the initial request was  
7 for. Her supervisor had found out that after she  
8 testified on behalf of the government, the next two  
9 weeks and weekends on her travel voucher were  
10 requests for reimbursement for her time that she  
11 spent then with the defense counsel.

12 I didn't know how to respond to that. So I  
13 contacted the FDIC criminal legal coordinator whose  
14 name is John Moshey. Together we contacted the AUSA  
15 in Dallas who was responsible for that litigation to  
16 see if Ms. Lewis's, then Brennan, time spent with the  
17 defense counsel was going to jeopardize the testimony  
18 that she had already given to the government.

19 The AUSA, though very disappointed that  
20 that had happened, simply said that she hadn't gotten  
21 enough information from Ms. Lewis to be critical one  
22 way or the other so that she could impeach her

1 testimony if she had to.

2 So from that point forward, we did nothing  
3 because it wasn't critical to the case. Had it been,  
4 there may have been something different. But because  
5 of that, I did have a legal file on her.

6 Q Given this background and these  
7 interactions or discussions regarding Jean Lewis, had  
8 you at that point formed an opinion about Ms. Lewis's  
9 professionalism, credibility and manner in which she  
10 conducted her work?

11 A My personal opinion was that there was some  
12 irresponsibility there and there were questions as to  
13 the integrity of her work. At the time that she was  
14 the witness for the government in Texas, I understood  
15 her position to solely be a secretary type of  
16 individual for the investigations department. Not  
17 until she moved to Kansas City did she actually  
18 become an investigator.

19 The investigation dilemma that was posed  
20 then in March of 1993 on the Paragould matter caused  
21 some embarrassment for the RTC. Once the  
22 conversations with the AUSA concluded, I was no

1 longer involved in whatever debriefing or reprimand  
2 of her for investigations in PLS concerning  
3 Ms. Lewis. That was solely between the attorney  
4 assigned to that institution and Julie Yanda and her  
5 supervisor. So I was not privileged to that  
6 information. But I was privileged to the  
7 conversations with the AUSA in fact down in  
8 Oklahoma.

9 Q You had at that point formed some  
10 impression about Ms. Lewis?

11 A Yes.

12 Q Did you relate that impression, that  
13 history formulating that impression to Mr. Adams at  
14 that point?

15 A No, not at that time. I simply said be  
16 careful, make sure what she tells you she can back  
17 up. It was just a quick word of warning, and it was  
18 no more than 30 seconds, maybe a full minute of  
19 conversation about that.

20 Subsequent to this conversation, we had a  
21 full discussion about the previous problems.

22 Q What was the substance of those discussions

1 after Mr. Adams had spoken with Ms. Lewis and come  
2 back to you, I think the next day is what you  
3 testified?

4 A Yes.

5 Q What was the conversation you had with  
6 Mr. Adams about that?

7 A He poked his head in my door, and I was on  
8 the phone. So he came back about 20 minutes later  
9 and said I had my conversation with Jean, I can't  
10 believe what she said, I can't believe it. She says,  
11 and then he relayed things she said, and I believe  
12 they are stated in the chronology.

13 Q If you could just recount some of them for  
14 me, I will give you the chronology to refresh your  
15 recollection.

16 (Witness examined the document.)

17 A She had indicated that a new subpoena was  
18 forthcoming for files per her conversation with the  
19 AUSA. She indicated that this David Hale with whom  
20 the subpoena was --

21 Q The basis?

22 A A basis for the subpoena, was involved with

1 Jim Guy Tucker and she was referring on the  
2 referral. She said Governor Tucker would resign as a  
3 result of these referrals immediately, which she  
4 indicated that we were now ready for trial, they were  
5 so complete they were absolutely ready for trial, and  
6 then cautioned her not to tell anybody, particularly  
7 Julie Yanda and Karen Carmichael. At that point I  
8 said, well -- he said why would she say that? I  
9 don't know. This is all I know, these are the things  
10 I do know. I don't know that Jean Lewis ever knew  
11 about my conversation with the AUSA in Tulsa.

12 Q Do you have an idea of why Ms. Lewis would  
13 not have wanted you to know?

14 A I have no idea. I really don't. I never  
15 spoke to her during this whole time of the referral  
16 review. I didn't speak to her prior to it. I don't  
17 know.

18 Q At that point, I think earlier you  
19 testified that Mr. Adams was shocked. I don't mean  
20 to be putting words in your mouth.

21 A Yes. He was shocked. That's a good word.

22 Q The fact that he was shocked was based on

1 Ms. Lewis's motivation? I am trying to be clear.  
2 Was he concerned about the substance of the  
3 allegations or was he concerned about the manner in  
4 which Ms. Lewis was conducting business?

5 A It was all relayed to him as cloak and  
6 dagger-ish, you know, it is a conspiracy, we have  
7 this, it's going to happen, I have already been in  
8 contact with the AUSA, this is ready for trial.

9 It was just fantastic. At least that's how  
10 he related it to me, that these stories were just  
11 fantastic. And "he will resign immediately upon us  
12 submitting these referrals," those are the kind of  
13 statements, it certainly rang true to form with what  
14 I had already heard and experienced.

15 Q That is, given your earlier interaction  
16 with Ms. Lewis and the impressions you had formed  
17 about her --

18 A Yes.

19 Q -- this did not surprise you?

20 A No, it didn't surprise me.

21 Q After that discussion in which Mr. Adams  
22 found out about the referral, what did he tell you

1 about the referral specifically, the existence of the  
2 referral?

3 A He said that there were nine, that she had  
4 pointed to them on her desk, that they would be --

5 MR. DINH: The record reflects the witness  
6 is referring to the chronology.

7 (Witness examined the document.)

8 BY MR. SCHAUER:

9 Q He expressed there would be referrals  
10 forthcoming but did not provide them to you at that  
11 point?

12 A I think the comment that alarmed him the  
13 worst was that "LJL," quoting from page 5 of the  
14 chron, "doesn't trust a courier service or the  
15 interoffice mail to send anything to PJA or him at  
16 PLS. LJL stated that these things have a 'nasty way  
17 of disappearing,'" as though there is some kind of  
18 conspiracy that we would get rid of documents in  
19 PLS.

20 In his conversation in relating this to me,  
21 at first I didn't pick up that she had said  
22 specifically that I was also involved, don't tell

1 Julie Yanda or Karen Carmichael. I kind of  
2 disregarded the Karen Carmichael part. I got to  
3 thinking why would she say that. Maybe I'm a  
4 stickler for rules, but that is what the attorneys  
5 do. We have to play within the rules.

6 Obviously I have no political motivation to  
7 hide this stuff. The PLS division has sued every  
8 type of person imaginable, be they circuit judges,  
9 congressmen. It just doesn't matter. We have done  
10 it, if every I is dotted and every T is crossed. But  
11 that is the attorney's responsibility to make sure  
12 that it is.

13 Q Just so we can back up a little bit, I'm  
14 getting a sense for you and I respect your  
15 professionalism in not bringing this out, but just to  
16 help us understand the dynamics here, I sense that  
17 there is a friction between PLS and investigations?  
18 Would that be a fair characterization?

19 A That is probably very fair.

20 MR. DINH: Off the record.

21 (Discussion off the record.)

22 BY MR. SCHAUER:

1 Q Could you maybe help me in understanding  
2 the source of that friction and the extent to which  
3 that friction existed?

4 A A long history of it.

5 Q Okay.

6 A I think it initially started as to who was  
7 in control of the determination as to who we sued and  
8 what we sued on. As those rules changed and  
9 metamorphosed into different responsibilities, the  
10 friction remained and grew.

11 If an investigator would come to a PLS  
12 attorney and say we have to sue John Smith, and you  
13 would say, well, why? Well, because everyone knows  
14 he is dirty. Okay, what evidence do you have? Well,  
15 everyone knows he is dirty.

16 It just doesn't fly. So when you don't  
17 proceed, the PLS attorney doesn't proceed with suing  
18 John Smith because there is no evidence there or  
19 maybe the statute of limitations has run or he has  
20 filed bankruptcy and our purpose in the RTC is simply  
21 to recover moneys, then the investigator accuses the  
22 PLS attorney of not moving forward with suing John

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1 Smith because everyone knows he is dirty.

2 MR. DINH: Just to clarify, John Smith is a  
3 fictional character.

4 THE WITNESS: John Doe. It is a  
5 hypothetical.

6 MR. SCHAUER: Otherwise, we will have to  
7 open another investigation.

8 THE WITNESS: So, the attorney is always  
9 wrong for doing so.

10 It escalated -- it was in every shop. It  
11 wasn't solely limited to this institution.

12 BY MR. SCHAUER:

13 Q To Kansas City. It was throughout the  
14 nation in the RTC.

15 A Yes. The Chicago investigators, the PLS  
16 attorneys would ask -- I asked one investigator to  
17 retrieve certain boxes for me and he looked at me and  
18 said "it is not my job." I asked him, then whose job  
19 is it?

20 If they were the client, then they should  
21 also have been responsible for client things like  
22 paying bills and reviewing fee bills and paying the



1 counsel, all of which they were not. We were. Yet  
2 we would find things within our bills like 20 phone  
3 calls 30 minutes each to the outside fee counsel  
4 charging us so much money for each phone call that we  
5 didn't know they were calling our fee counsel and  
6 running the bills up on these things when we already  
7 had the information. All they simply had to do was  
8 communicate with us.

9       It seemed to be a matter of trust from the  
10 get-go. Having the investigator make legal  
11 determinations we didn't believe was necessarily  
12 prudent or correct, and there were always a lot more  
13 legal reasons behind certain decisions, and there  
14 were channels for those decisions to be made all the  
15 way up from the initial supervisor, deputy supervisor  
16 clear up to Washington, D.C. who was giving legal  
17 scrutiny as to every step that we took. Even if we  
18 decided to close a claim area out, it had to go all  
19 the way up the line of command. You had to justify  
20 yourself why you couldn't bring the case.

21       Q   So, it would be a fair characterization to  
22 say there was a general suspicion and hostility

1 between PLS and investigations?

2       A   I walked into it that way. It was there  
3 when I --

4       Q   It was there when you got there and it is  
5 still there as far as you know?

6       A   I think for the most part. There were  
7 elements in each office. I can't say that it was  
8 general only to investigations versus PLS. In every  
9 office there seemed to be a core group of discontents  
10 who knew better, who wanted it now, who refused to  
11 follow policies and procedures. They seemed to me to  
12 be impatient little kids who didn't care what the  
13 rules were, we want this done now, and you are going  
14 to stop me if you make me go through the rules and  
15 the procedures.

16       So, yes, it was almost like a parental -- a  
17 rebellious child who the parents say no, I want you  
18 in at a certain time. It was just absolute rebellion  
19 from our point of view, from my point of view. Some  
20 of the investigators were that way, not all of them.  
21 Many of them communicated wonderfully, took direction  
22 well and were very proactive in suggesting other

1 means of action so that we could go ahead and proceed  
2 with the claim if we all felt it was there. There  
3 were great working relationships.

4 Q In the context of this environment, I sort  
5 of want to understand the sort of creation of the  
6 blue ribbon panel and blue ribbon manual and the  
7 meeting that occurred, I think, in January of '93.

8 A March 31. Things had deteriorated to the  
9 point and I think probably the Paragould bond  
10 situation may have been the crowning blow for that.

11 All PLS attorneys and all investigators  
12 were requested to meet in a room at a site off of RTC  
13 property, and it was simply a meeting whereby every  
14 department would have an opportunity to go over what  
15 was expected of them so that they would know what  
16 constraints PLS was under, what obligations PLS had,  
17 who we reported to and what the scrutiny was, and  
18 then the same for them, and to clarify the lines of  
19 reporting for each one.

20 That's what the meeting was about. I don't  
21 know what necessarily occurred subsequent to that. I  
22 do know that ultimately the blue ribbon committee,

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1 they had already been working on the manual and more  
2 things were added to it after that.

3 Q In the context of your responsibilities in  
4 terms of criminal referrals, you mentioned earlier  
5 that your understanding of the language that was  
6 shown to you in the blue ribbon manual was that you  
7 were to do a legal review?

8 A That was not in the blue ribbon manual.  
9 That was a national directive.

10 Q What was your understanding of what that  
11 review entailed?

12 A In my mind, the legal review would include  
13 reviewing what was to be submitted to the Justice  
14 Department, making sure that the corresponding  
15 documents verified and backed up that which we were  
16 alleging. If it didn't, to make suggestions and  
17 corrections to the referral so that the DOJ would  
18 have every possible advantage of moving forward with  
19 the claim.

20 Q So in a sense, your job as you understood  
21 it, your mandate was to make sure that RTC was giving  
22 in its referral to the Department of Justice or to

1 the specific U.S. Attorney's Office and the FBI the  
2 most work that they could possibly do on a specific  
3 referral?

4 A Accurate and complete information I think  
5 that is what is most important. Just accurate and  
6 complete. If the documents are saying one thing,  
7 make sure the documents on which we were basing the  
8 referral actually do say that.

9 Q It is this that -- it is with that  
10 understanding that you eventually looked at the nine  
11 referrals prepared by Ms. Lewis?

12 A Yes.

13 Q When you looked at those referrals by  
14 Ms. Lewis, what was your impression of the referrals  
15 that Ms. Lewis prepared, just generally?

16 A Confusion, incomplete, unclear, hard to  
17 follow, hard to read, hard to understand allegations  
18 that I didn't see were necessarily backed up by the  
19 documents that were supposedly supporting them.

20 Q In saying that, you are simply saying that  
21 you didn't think that the referral had reflected the  
22 best work that RTC could do in terms of following up

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1 and accurately reflecting specific transactions?

2 A There were a lot of assumptions and  
3 conclusory statements that were made that were not  
4 backed up by the documents that were supposed to be  
5 backing up those statements.

6 Q And you saw as your mandate to --

7 A Simply do a cautious review of what we  
8 should be submitting under the RTC cover. We had  
9 already gotten complaints that what we were  
10 submitting had an integrity problem. My  
11 responsibility was to make sure that what we are  
12 submitting as an agency simply states something  
13 clearly, concisely and truthfully with what is  
14 supposed to be documented as evidence.

15 Q At this point, do you have any motivation  
16 to prevent these referrals from going out or  
17 motivation to prevent the investigation of any of the  
18 specific transactions mentioned in any of the nine  
19 referrals?

20 A Absolutely not. There has been  
21 implications since that time that we had political  
22 motivations to kill the referrals. My politics are

1 somewhere far right of center. I would not have had  
2 any personal motivation to kill anything if it were  
3 politically motivated because of the people to which  
4 these are referring. The President is not on my  
5 political wavelength.

6 But I don't care, I definitely don't have a  
7 problem of submitting a referral on anyone regardless  
8 of their politics if in fact I know that what we have  
9 seen bears testimony to that allegation. What I saw  
10 did not bear testimony to the allegations within the  
11 referrals.

12 The people named in the referral were not  
13 those people who were the primary players. The  
14 people who were primary players were simply listed as  
15 witnesses. That's not right.

16 The people who were primary players for the  
17 most part in several of these did not have the  
18 political status that those who were actually named  
19 as referrals had. It just didn't make sense to me.

20 All I was asking within the review was make  
21 sure you have your facts right, and why didn't you  
22 name X, Y and Z person, they are the ones who had

1 control of this document or control of the funds,  
2 what happened to this person, why did you name this  
3 person when this person's signature is on this  
4 document?

5 Those are the type of questions I would  
6 simply ask in a civil review or criminal review. It  
7 really didn't matter.

8 Q At this point while you are doing your  
9 review, you are aware of an outstanding document  
10 subpoena from the AUSA?

11 A To be perfectly honest, I didn't put the  
12 two together.

13 Q Were you aware at that point that there was  
14 investigation by the FBI into matters relating to  
15 Capital Management?

16 A I didn't put it together until I was in the  
17 middle of the review, and then the light bulb came  
18 on. I was just too busy.

19 Q You were focused in on the review?

20 A Yes. I was focused in on my other cases I  
21 had to take care of also, and one inquiry on a grand  
22 jury subpoena earlier was not something that I simply

1 related back to these until we got into it.

2 Q I want to spend a little time talking about  
3 the subpoenas now, if we could. The first subpoena  
4 you received came out of the Eastern District's  
5 office. I think Fletcher Jackson sent that subpoena?

6 A Yes.

7 Q That was based on, at that point, the grand  
8 jury subpoena for David Hale and others; is that  
9 correct?

10 A Yes.

11 Q At the point they were asking for the  
12 Capital Management files?

13 A They asked for David Hale and Dean Paul,  
14 Limited files. But that wasn't necessarily what was  
15 on the subpoena.

16 Q What was on the subpoena again, just to  
17 clarify the record?

18 A "Any and all files relating to Madison  
19 Guaranty from 1980 through the demise of the  
20 institution."

21 Q And in your attempt to respond to that  
22 subpoena, you had contact with Mr. Jackson, Fletcher

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1 Jackson?

2 A I did not.

3 Q Do you know who did?

4 A Phil Adams.

5 Q So Phil Adams was speaking to Mr. Jackson  
6 at this point?

7 A Yes.

8 Q Was Mr. Adams speaking to anyone at the  
9 Little Rock FBI office? Steve Irons?

10 A Could have been. I don't recall.

11 Q Were you aware at that point or have you  
12 subsequently become aware that there was a dispute  
13 between Fletcher Jackson in the U.S. Attorney's  
14 Office and the Little Rock FBI regarding the scope of  
15 the various subpoenas which came to RTC?

16 A Absolutely.

17 Q You were aware of that?

18 A Upon the second subpoena that was supposed  
19 to be narrowed down, the agreement was with  
20 Mr. Fletcher Jackson that the subpoena would simply  
21 reflect the David Hale and Dean Paul, Limited files.  
22 When we received the second subpoena, it added the



1 tag that was on the first subpoena.

2 When Phil called Fletcher to ask him why he  
3 backed out of his agreement, he said I didn't do  
4 that, the FBI did, they have their own agenda and I  
5 didn't tell them to do that, they do what they want  
6 to do.

7 Q Were you aware at that point that Mr. Irons  
8 of the Little Rock FBI was in contact with Ms. Lewis  
9 or anyone else in investigations?

10 A She had already told Phil that she was in  
11 contact with Mr. Irons and Mr. Jackson. I believe  
12 she told him that at the first meeting.

13 Q But you don't know if Mr. Adams was in  
14 contact be Mr. Irons?

15 A I don't know when that happened. I'm sure  
16 he was. I know I started receiving phone calls from  
17 Mr. Irons.

18 Q So we have a situation where there is a  
19 dispute in Little Rock between the U.S. Attorney's  
20 Office and the FBI and each of them are communicating  
21 with --

22 A With RTC.

1 Q -- with RTC both in the PLS section and the  
2 investigations section?

3 A It appeared that way to us, yes.

4 Q At the time or only in retrospect?

5 A It occurred to us about the time the second  
6 subpoena came in and the comments that were being  
7 made by Mr. Jackson and the -- when we are making  
8 agreements as to the scope of the subpoena and the  
9 second subpoena comes in with a different complete  
10 scope and the AUSA says he has no control over the  
11 FBI and what it does, then it becomes two different  
12 sets of information from the Little Rock enforcement  
13 agencies. Now, whether or not that was real or  
14 whether or not it was contrived, I have no idea.

15 Q Which part of the interaction between  
16 Mr. Irons and Mr. Jackson do you have any way of  
17 knowing whether that is actually -- whether that  
18 actually was in fact a conflict?

19 A I don't know whether it was a conflict or  
20 whether it was a bad cop routine. I don't know.

21 Q At that point it seems the communications  
22 was going in various directions and there was some

1 disagreement?

2 A It appeared that way to us. We were  
3 getting two different stories in two different  
4 directions, it appeared.

5 Q Either through Mr. Adams or through anyone  
6 else, did you have knowledge that Mr. Irons was  
7 complaining about Ms. Lewis's response to document  
8 subpoenas?

9 A I don't recall.

10 Q Would that surprise you?

11 A No.

12 Q Why wouldn't that surprise you?

13 A The intensity of complaints I was receiving  
14 about the noncooperation of the RTC in its document  
15 production had to have been coming from various  
16 parties. We were talking with one person, and we  
17 would get a phone call from main Justice and we would  
18 talk to a different local person in Little Rock and  
19 we would get a phone call from someone else. It just  
20 seemed that we weren't talking to the right person.

21 Q It wasn't until November 5th, I think you  
22 testified, of 1993 that you came to understand that

1 Ms. Lewis had a number of documents in her possession  
2 that you were at that time unaware of?

3 A Yes.

4 Q Let me show you a document which has been  
5 identified as KC 49S and see if you -- the document  
6 appears to be an E-mail which is sent from you to  
7 you. That is obviously something I would like to ask  
8 you about. It is dated April 5, 1994.

9 (Witness examined the document.)

10 Have you seen this document?

11 A Yes. I drafted it.

12 Q What was your intent in drafting this  
13 document?

14 A I received a phone call from Phil Adams  
15 asking me about the facts surrounding my discovery of  
16 the documents and an alleged lie that they had told  
17 me. I was simply clarifying. This was the best  
18 recollection I had at the time.

19 Q What was the lie that they had told you,  
20 alleged lie?

21 A The alleged lie was that investigations  
22 told me they had no documents. But that's not true.

1 They never said "we have no documents in our  
2 possession." They simply omitted ever telling me  
3 that they did.

4 I did not ask them "do you have any of  
5 these documents in your possession" because we were  
6 discussing the document production, we were  
7 discussing that. They simply never volunteered that  
8 they had them. It wasn't a lie by commission. It  
9 was an omission, an implication that they had none  
10 because they never even commented on it.

11 I did not know that I needed to simply ask  
12 an alleged team member whether they had documents in  
13 their possession in discussing a rolling document  
14 production.

15 Q So, you are in a situation where you are  
16 producing -- you are charged with the responsibility  
17 of producing documents, a so-called team member of  
18 yours is discussing that production with you but  
19 never --

20 A It is no longer an internal review. It is  
21 now the RTC producing documents to either the AUSA or  
22 the FBI.

1 Q Pardon me for one moment. I'm looking for  
2 a reference in the document.

3 (Pause.)

4 Directing your attention to the second to  
5 the last paragraph of that page, in the final  
6 sentence which reads "I felt like I had been set up,"  
7 do you see that reference?

8 A Yes.

9 Q What were you referring to when you wrote  
10 that sentence?

11 A The accusations that were being made from  
12 main Justice were that the attorney in Kansas City  
13 office was interfering with the federal prosecution  
14 by not producing documents and interfering with their  
15 ability to investigate. It wasn't made once. It was  
16 made three different times, or maybe even four  
17 times.

18 Before the last three times, I had gone  
19 over to investigations and talked to them about the  
20 urgency of the document production, the method by  
21 which we had everything set up, and not one word was  
22 said to me that they had all the documents already in

1 a room just down the hall from us.  
2 So, as the heat was being turned up even by  
3 main Justice, they remained quiet, until I was taken  
4 off the case, and then everything was released. Yes,  
5 I felt like I had been set up.

6 Q Set up by whom?

7 A Oh, investigations.

8 Q People in investigations?

9 A Oh, you bet.

10 Q Specific people?

11 A Investigations.

12 Q Were there specific people in  
13 investigations that you felt --

14 A Sure.

15 Q Who were they?

16 A I felt like I had been set up by the  
17 criminal investigators and Mr. Iorio. Whether or not  
18 it was conceived and developed and thought out, I  
19 don't know, or whether they simply played along with  
20 it until that was the result, I don't know. I still  
21 felt set up.

22 Q And you still feel set up today?

1 A The intensity of the moment obviously has  
2 passed.

3 Q Right.

4 A Yes.

5 Q Do you think the general animosity that you  
6 testified to earlier between the divisions may have  
7 given motivation for them to --

8 A Certainly. I'm not going to say that I'm  
9 taking it personally, no. I think it was simply --  
10 maybe it was personal and I am just too blind to see  
11 it. I think that I was the person in the hot seat at  
12 the time, and legal was going to get theirs and this  
13 was how it was going to happen.

14 Q Given the context of that animosity, it  
15 wouldn't surprise you that people in investigations  
16 would maintain documents that they knew ultimately  
17 were to be produced and let the person in PLS be  
18 accused of hindering an investigation?

19 A It wouldn't surprise me.

20 Q Just so the record is abundantly clear,  
21 there were allegations from main Justice that you had  
22 impeded the investigation. I take it those

1 allegations are not true?

2 A No, they are not true.

3 Q Did anyone ever pressure you politically or  
4 otherwise to impede this investigation?

5 A No one ever asked me to. Nobody implied  
6 it. I worked until 4:00 in the morning for four days  
7 straight trying to get something out that the  
8 investigators had 2-1/2 years to investigate. I had  
9 eight days. And I think I did my job, period, end of  
10 conversation.

11 I sent it on. They did with it what they  
12 did. I did not interfere from that point forward. I  
13 was simply trying to do a document production that  
14 happened to be on the same institution, and then all  
15 of a sudden I'm being accused of interfering with the  
16 federal prosecution of these referrals. What does  
17 that mean? I had just spent eight days and nights  
18 working on this thing. How can I interfere with the  
19 federal prosecution delaying something when I am  
20 working my brains out to get it out in eight days?

21 No. Whatever kind of delay I had was  
22 simply physically impossible to get it done any

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1 sooner than that. The document production was a  
2 situation of mass miscommunication between every  
3 player involved in hindsight. During the time it was  
4 happening, I'm starting to get the accusations that  
5 I'm already interfering simply because the documents  
6 are there within a week of the time the referrals  
7 went out. What does that mean when the size and  
8 volume of the request typically takes simply six  
9 weeks just to get an inventory from the various  
10 departments or from the RTC as to what they actually  
11 have in their possessions?

12 No, I do not think I interfered with it,  
13 and no, I was never asked to interfere or stop any  
14 type of referral or investigation.

15 Q Do you know why the RTC put investigations  
16 under PLS in 1994?

17 A I have no idea of the absolute reasons  
18 why. It certainly streamlined a lot of things. It  
19 took people out of the loop who had no contact or  
20 involvement in our cases and simply left it with  
21 investigations and PLS. The people in commercial  
22 litigation had no more say as to whether or not we



1 sue or not sue people, whether we should settle or  
2 not settle with certain people. It streamlined  
3 things.

4 But no, I don't know what the motivation  
5 was.

6 Q Not so much the motivation, but do you know  
7 whether it was by act of statute or by --

8 A I believe it was by act of statute, the  
9 completion statute that came down on February --

10 Q It is not a test. I just wanted to  
11 clarify.

12 A I think that's when it happened.

13 Q It wasn't some attempt to limit the ability  
14 of investigations to investigate specific individuals  
15 or carry on investigations into specific matters?

16 A Not that I know of.

17 Q Are you aware of the Rose Law Firm?

18 A Yes.

19 Q How is it you are aware of the Rose Law  
20 Firm?

21 A I read the newspapers.

22 MR. DINH: Off the record.

1 (Discussion off the record.)

2 BY MR. SCHAUER:

3 Q Have you dealt with the Rose Law Firm?

4 A Yes, I have.

5 Q In the course of your dealings with the  
6 Rose Law Firm, have you formed an opinion about the  
7 work of the Rose Law Firm?

8 A Yes, I have.

9 Q What is that opinion?

10 A They were efficient and usually accurate.

11 Q You testified earlier to those calls from  
12 main Justice where people were specifically asking  
13 for files that were on Jean Lewis's desk.

14 A That was not from main Justice. That was  
15 from Steve Irons and from Fletcher Jackson. David  
16 Hains also, I believe, one of the FBI agents.

17 Q Based on those conversations, you drew the  
18 conclusion that Ms. Lewis was speaking about specific  
19 documents?

20 A Those questions were coming in  
21 simultaneously with the questions from main Justice  
22 as to why the attorney in Kansas City was

1 interfering.

2 Q After the nine referrals ultimately went to  
3 both the FBI in Little Rock as well as the U.S.  
4 Attorney's Office, were you aware that the fact of  
5 those referrals as well as some of the substance of  
6 those referrals were reported in the press?

7 A Yes. The first time I really remember  
8 learning about it was from a newspaper article in the  
9 Kansas City office -- in the Kansas City area, the  
10 Star. The next time I learned about how much they  
11 were asking for was because I was being contacted by  
12 ABC World News Tonight for comments. And then I was  
13 flying to Chicago for another one of my cases and I  
14 happened to pick up some light reading on the way up,  
15 thinking I would just pick up a Time magazine, and I  
16 opened it up and learned about myself from very  
17 confidential information that could only have come  
18 from the criminal referral, which is supposed to be  
19 protected by the Privacy Act.

20 Q Had you ever experienced another instance  
21 where criminal referrals protected by the Privacy Act  
22 had ended up in the press?

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1 A Absolutely not. We work with the AUSAs  
2 fighting tooth and toenail to keep defense counsel  
3 from getting the original referrals as part of their  
4 6(e) information because usually it involves people  
5 that may not be the subject of that particular  
6 criminal referral.

7 Q Did you at that time and have you since  
8 formed an opinion as to where the media was getting  
9 this information?

10 A Yes.

11 Q What is that opinion?

12 A It is solely my opinion, but it had to have  
13 come from the criminal investigators because of the  
14 comments that were being made. Only those people had  
15 that information or could draw those conclusions or  
16 had drawn those conclusions and verbalized them up to  
17 that time.

18 MR. SCHAUER: Off the record.

19 (Discussion off the record.)

20 MR. SCHAUER: I think we are finished  
21 here.

22 EXAMINATION

1 BY MR. DINH:

2 Q I just have a couple of quick follow-up  
3 questions for you. You stated earlier with respect  
4 to your September 22nd meeting with Phil Adams after  
5 his September 21st meeting with Ms. Lewis that he was  
6 troubled by his conversation with Ms. Lewis and at  
7 one point you stated that he will resign upon the  
8 submission of the referrals.

9 A Yes.

10 Q Did he follow up on that threat when the  
11 referrals were ultimately submitted to the U.S.  
12 Attorney?

13 A Not that I know of.

14 MR. ENDLER: Just so the record is clear,  
15 you are referring to the governor resigning, not  
16 Mr. Adams.

17 THE WITNESS: I'm sorry.

18 BY MR. DINH:

19 Q This is a case of misplaced modifiers.  
20 Thank you for making that clear.

21 I actually thought it was Mr. Adams who was  
22 making the promise that such was the case.

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1 MR. SCHAUER: So we can clarify on the  
2 record, the testimony was I believe -- and correct me  
3 if I'm wrong -- that Ms. Lewis indicated that she  
4 believed that Jim Guy Tucker, the then-sitting  
5 governor of Arkansas, would resign from his office as  
6 governor once these referrals were sent out.

7 THE WITNESS: Immediately upon the  
8 submission of the referrals, yes.

9 BY MR. DINH:

10 Q You said that also during this conversation  
11 that she did not trust the courier to send these over  
12 to you.

13 A That's what she said to Mr. Adams.

14 Q And the direct quote was that these  
15 referrals have a way of disappearing.

16 A "A nasty way of disappearing." That's a  
17 quote.

18 Q This was in October 1993; correct?

19 A Yes.

20 Q We touched upon earlier regarding an  
21 earlier referral relating to Madison Guaranty  
22 Savings & Loan Association, which I refer to by

1 number as CR 0004. Do you know when this referral  
2 was submitted?

3 A I do now. At the time I did not know about  
4 the existence of the referral. I now know that it  
5 was submitted a year, maybe two years prior to the  
6 time the other referrals were made.

7 Q And it was submitted to the U.S. Attorney's  
8 Office in Little Rock as the normal course of  
9 business would dictate?

10 A Yes.

11 Q And then subsequently that was transferred  
12 to the Department of Justice in Washington, D.C.?

13 A Yes.

14 Q Do you know when that referral was finally  
15 declined by any representative of the Department of  
16 Justice or U.S. Attorney's Office?

17 A I received a copy of the declination letter  
18 from the U.S. Attorney, and it was subsequent, I  
19 believe, to the date the referrals were actually  
20 submitted.

21 I don't see it right here in the  
22 chronology, but there was a letter.

1 Q So at the time that she was working on  
2 these referrals, the second set of referrals relating  
3 to Madison Guaranty, there still has been no action  
4 with respect to the first referral CR 0004 which she  
5 had submitted a year or two earlier?

6 A Yes, as I understand it.

7 Q And have you come to have any knowledge  
8 with respect to the handling of the original criminal  
9 referral by the Justice Department in which for a  
10 substantial period of time it was not accounted for?

11 A I don't know what kind of information the  
12 Department of Justice was giving back to the  
13 investigators. I was unaware that there was even a  
14 criminal referral out there. There had been an  
15 indictment and a trial and an acquittal, and I don't  
16 even know if that referral, the first referral to  
17 which you are referring, I believe CR 0004, was prior  
18 to the indictment or subsequent to the indictment and  
19 acquittal of Mr. McDougal and others, I don't know.

20 Q At the time I understand you had no basis  
21 for knowing any of this information. But knowing  
22 what you do now, do you fault Ms. Lewis for

1 expressing a concern that these referrals have a  
2 nasty way of disappearing, knowing that she has  
3 submitted a criminal referral one or two years  
4 previously and had not heard back by the time she is  
5 already completing a second set of nine criminal  
6 referrals relating to the same matter?

7 A No.

8 Q Why is that?

9 A I then subsequently had an opportunity to  
10 read it. There is no sense of logic to it. You  
11 can't decipher one thing from another. It is very  
12 confusing. If I thought these nine referrals were  
13 confusing, that one referral putting all of these  
14 allegations into one little referral simply was a  
15 tangled web. I don't know if I were the AUSA where I  
16 would start untangling that web if I really thought  
17 there was something there.

18 Q You have a chance to review CR 0004?

19 A I have seen it since then, and I believe I  
20 saw it obviously before I left the Kansas City  
21 office.

22 Q Is your impression that all the information

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1 that is contained in the subsequent nine criminal  
2 referrals are all contained in the original criminal  
3 referral?

4 A Not every one of them, but the majority of  
5 them are. They are simply broken down. My overall  
6 general opinion is that the subsequent nine referrals  
7 are a breakout of the original referral. Not every  
8 one of them may have been involved in it, but it  
9 seems to me as I recall two years ago reading it that  
10 many of the same allegations that are in the nine  
11 were made in the original one.

12 Q You stated that both the nine criminal  
13 referrals and the original CR 0004 referral was  
14 confusing and hard to understand and badly written.

15 A Yes.

16 Q Is this an English review or is it a legal  
17 review?

18 A A comprehension review.

19 Q Did you have direct supervision -- are you  
20 in the chain of command for the purpose of  
21 supervision of Ms. Jean Lewis? By that, I mean who  
22 does she report to?



- 1 A She does not report to me.  
2 Q Do you know who Mr. Jim Dudine is?  
3 A Yes.  
4 Q Can you state his position?  
5 A He is the head of investigations for the  
6 RTC.  
7 Q He is the ultimate boss of investigations?  
8 A Yes.  
9 Q Mr. Dudine told us that "my impression of  
10 her work," being Jean Lewis's works "was that it was  
11 pretty solid work, that she clearly knew how to  
12 follow transactions and documents and put together a  
13 decent criminal referral."  
14 Do you disagree with that?  
15 A I believe that she probably did a good job  
16 of following the facts, but I disagree with him in  
17 that she could then verbalize it in writing.  
18 Q So, you say that he is in disagreement with  
19 you when he says that Ms. Lewis can "put together a  
20 decent criminal referral," or do you have a different  
21 understanding with Mr. Dudine as to what the word  
22 "decent" means?

- 1 A Evidently.  
2 Q Are you aware of any awards or accolades  
3 that Ms. Lewis received for her work on the Madison  
4 referrals?  
5 A I have subsequently learned that she  
6 received monetary bonuses for her work on Madison  
7 Guaranty, yes.  
8 Q In addition to her normal compensation,  
9 these would actually be award bonuses?  
10 A Yes.  
11 Q You stated earlier that there were  
12 accusations three or four times that you were  
13 interfering and obstructing with the ongoing  
14 investigation of Madison Guaranty?  
15 A Yes.  
16 Q Now, these allegations were made from  
17 Justice Department officials?  
18 A To Carl Gamble and/or Greg Golden who then  
19 relayed them to me.  
20 Q To the PLS people in Washington, D.C.?  
21 A Main Justice relayed these to both Carl  
22 Gamble and Greg Golden at various times, and then

1 they in turn called me.

2 Q I guess what my question was what section  
3 did Mr. Gamble and Mr. Golden work?

4 A They are the criminal liaison with the  
5 Department of Justice for the RTC.

6 Q These were communicated directly to you?

7 A Yes.

8 Q But your testimony is that the dispute over  
9 the production of documents relating to Madison  
10 Guaranty Savings & Loan Association was "a massive  
11 miscommunication"? Or did I misunderstand that when  
12 you were talking about something else?

13 A The miscommunication at the very least was  
14 between RTC and DOJ, whether it be PLS and  
15 investigations or FBI and the U.S. Attorney's  
16 Office.

17 With regard to the document production,  
18 there were multiple communications as far as I am  
19 concerned. Part of the miscommunication was a lack  
20 of communication in many instances, particularly with  
21 regard to the investigation division to me as the  
22 person responsible for the production of those

1 documents.

2 Q But there was a miscommunication or a lack  
3 of communication that precipitated the dispute in  
4 production?

5 A At the very least.

6 Q At the very worst, it was that you felt you  
7 had been deliberately set up in accordance with your  
8 April 5, 1994 memorandum?

9 A Yes. On April 5, 1994, I was requested to  
10 appear before the Special Counsel with the  
11 implication that I was going to be accused of  
12 interfering with the federal prosecution, possibly a  
13 prison count. When that happens, all of the  
14 preceding facts in my mind equal I'm being set up,  
15 when that was not the intention of me at any time to  
16 interfere with the federal prosecution of these  
17 referrals.

18 I tried to get them out as soon as  
19 possible. I did everything within my power to get  
20 everything out and off my table as soon as possible,  
21 but to do so responsibly, I was unable to do so with  
22 regard to the document production for whatever

1 reason, as it turned out, a lack of communication.

2 Now, whether it was intention by the  
3 investigations division, I don't know. It sure seems  
4 to me that it was.

5 Q So, on April 5, 1994 is when you wrote this  
6 E-mail that was shown earlier to you labeled KC  
7 0049S.

8 A Yes.

9 Q Can you explain why you wrote an E-mail  
10 addressed to yourself?

11 A I wanted it for my file.

12 Q The first line of this E-mail -- actually,  
13 the first word says "Phil." Can you tell me who Phil  
14 is?

15 A Phil Adams.

16 Q Did you subsequently send this to Phil  
17 Adams?

18 A I was trying to decide whether or not I  
19 would. I was trying to organize my thoughts because  
20 he called me with the information that there was a  
21 lie, that I had said I had been lied to and this was  
22 the lie. I was trying to decipher in my own mind

1 what it was that actually happened.

2 April 5 was the second day that I was  
3 reporting to the Dallas office, and I was given 15  
4 institutions in a whole new district, Mississippi,  
5 Louisiana and Texas. I'm trying to get up to speed  
6 on all these new cases and all of a sudden, I'm  
7 jerked back into the past with an allegation that I  
8 was interfering with the federal prosecution.

9 This was the lie, that I said I had been  
10 lied to by investigations. I am trying to get my  
11 thoughts complete. When I do that, the way I get my  
12 thoughts complete is I simply write it.

13 Q So you wrote this memorandum to yourself.  
14 You did not send it to Mr. Adams?

15 A I ultimately did send it to Phil. I was  
16 getting it straight on this, on just my computer  
17 screen.

18 Q That's why you sent it to yourself, simply  
19 as a draft?

20 A Absolutely.

21 Q You subsequently retained this draft in  
22 your files, which is why we have this record?

- 1 A Yes.
- 2 Q The record of you sending it to yourself?
- 3 A That's correct.
- 4 Q I wanted to make that clear. It seems
- 5 rather odd. When exactly were you interviewed by the
- 6 Special Counsel?
- 7 A It was either April --
- 8 Q Before or after you wrote this E-mail?
- 9 A After I wrote the E-mail. The day that
- 10 that was written was the day I was told I had to go
- 11 before the Special Counsel and testify.
- 12 Q You were told the subject matter about
- 13 which you were about to testify with the Special
- 14 Counsel before you had given such testimony?
- 15 A I don't recall precisely what. I do know
- 16 that Phil -- the people in Kansas City have had more
- 17 communication with the Special Counsel because the
- 18 investigators with the Special Counsel were in the
- 19 office in and out, in and out. Then the list was
- 20 made and they contacted me.
- 21 Q Do you know how Phil came about this
- 22 information? By Phil, I mean Mr. Adams.

- 1 A I don't know.
- 2 Q He did not tell you how he heard about
- 3 this?
- 4 A I don't recall.
- 5 Q You don't recall exactly how this quote,
- 6 unquote, "lie" was communicated to Mr. Adams and
- 7 subsequently communicated to you?
- 8 A I don't recall.
- 9 Q When you said earlier it was a lie, and you
- 10 stated this in your E-mail that it was a lie by
- 11 omission, and you explained that they simply, "they"
- 12 being the investigations unit, simply did not tell
- 13 you that they had the relevant documents when you
- 14 expected them to tell you that they had the relevant
- 15 document; is that correct?
- 16 MR. SCHAUER: I want to clarify. I think
- 17 the lie you are referring to in the E-mail is
- 18 different than the lie of omission that she was
- 19 talking about. I think the lie here that is referred
- 20 to in your document was a lie that they were
- 21 accusing.
- 22 BY MR. DINH:

1 Q Let me just refer you to the E-mail and ask  
2 you to read the third and fourth sentences of that  
3 E-mail. Starting with "I also spoke."

4 A "I also spoke to Lee and Mike Caron and  
5 Dick Clark on October 27 when I went to the office to  
6 specifically discuss the document production. No one  
7 ever told me 'investigations does not have any  
8 documents.' The 'lie' was ultimately by omission.  
9 Not one person ever told me that investigations had  
10 documents already retrieved from the multitude of  
11 departments that routinely we have to obtain and  
12 forward boxes to investigations for any document  
13 production."

14 Q So, by omitting what you consider to be  
15 relevant information to your work, that omission was  
16 in effect a lie?

17 A I don't know that I could agree with that  
18 per se. The -- the following sentence is "we even  
19 went so far as to discuss the secure room I had  
20 prepared in our office for the rolling document  
21 production," but they simply remained silent and did  
22 not mention that they had all the documents in their

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1 possession already.

2 Q Again, by not telling you that they had the  
3 relevant documents when circumstances and  
4 expectations would dictate otherwise, you considered  
5 that to be a lie?

6 A I consider it to be nontruth.

7 Q That's fair enough. The only reason I  
8 pursued this so deeply is I wanted to get to  
9 understand exactly what you mean by the lie is  
10 ultimately one of omission.

11 So, at no time was there a false statement  
12 made to you with respect to these documents?

13 A No.

14 Q And when you finally questioned Mr. Ausen  
15 regarding the documents on November 5th, 1993, when  
16 you asked him do you have any files, within 20  
17 minutes he called back and said yes, we have them?

18 A No. My question was does she have any  
19 files in her office and do you have any inventories.

20 Q And he provided you with the truthful  
21 answer to those questions?

22 A Yes.



1 Q As a matter of fact, he took inventories  
2 over to your office?

3 A Yes, he did.

4 Q And then November 5th was also the time  
5 when you were taken off the case, and ultimately, on  
6 November 8th is when you officially were taken off  
7 the case?

8 A No.

9 Q November 5th was when you stopped doing  
10 work on the case and November 8th is when you were  
11 ultimately taken off?

12 A November 5th is when I discovered when the  
13 documents were. On November 6, Saturday, I composed  
14 the E-mail to Mr. Gamble so that he could explain it  
15 to main Justice. On Monday, the 8th, I was removed  
16 from the project.

17 Q So when you said earlier that you felt you  
18 were set up because right after you were removed from  
19 the case the documents were produced as if there were  
20 no problems whatsoever, could it be simply that you  
21 asked the right question on November 5th?

22 A Yes. I equate it with saying, as I would,

1 if I ask someone in a social setting, are you married  
2 that maybe I was dating or potentially going to date,  
3 and they say no, but they omitted to tell me that  
4 they were living with someone, to me it is the same  
5 thing. You have to depose the person and ask the  
6 right question in order to get all the information  
7 that is relevant.

8 In this situation, I was over there with  
9 the intention of getting this document production  
10 clarified, and they did not divulge one ounce of  
11 information that all of the documents were in their  
12 possession.

13 Q You stated earlier, however, that you  
14 thought that you had no information or knowledge  
15 whether or not you were being intentionally set up.  
16 It seems to me now you are suggesting that there was  
17 an element of bad faith involved in this  
18 prevarication by the investigations department.

19 A Yes, I believe so.

20 Q So it was intentional. They were keeping  
21 you away from the documents?

22 A Yes. I don't know that it was away from

1 the documents. They were trying to keep legal out of  
2 the loop, period, end of conversation.

3 Q By period, you mean even with respect to  
4 referrals?

5 A Anything. We did our referral review.  
6 That should have been the end of it. They didn't  
7 want anything more to do with those with regard to  
8 any of their work.

9 Q You said earlier that some of the animosity  
10 between the investigations unit and the PLS unit  
11 contributed to the working relationship between you  
12 and Ms. Lewis and the coordination of the production  
13 of documents; correct?

14 A I don't know that I said that.

15 Q Was there animosity between the  
16 investigations unit and the PLS unit?

17 A Yes.

18 Q Did that animosity contribute to the  
19 dispute that you had or the misunderstanding that you  
20 had with respect to the production of documents?

21 A Yes.

22 Q That led to the misunderstanding which you

---

1 characterize as feeling like you have been set up?

2 A Feeling like I have been set up, yes.

3 Q I take it it was not a good working  
4 relationship?

5 A No.

6 Q Did your opinion of and animosity toward  
7 the investigations unit and in particular Lee Ausen  
8 and Jean Lewis affect your review of their work with  
9 respect to the nine criminal referrals relating to  
10 Madison Guaranty?

11 A No. Prior to that, I didn't feel like I  
12 necessarily had any animosity towards Lee Ausen nor  
13 he to me. We were simply co-criminal coordinators,  
14 he on the investigation side and I on the legal  
15 side.

16 Q You stated earlier that you had formed an  
17 opinion working with the Rose Law Firm --

18 A Yes.

19 Q -- that they were efficient and usually  
20 accurate?

21 A Yes.

22 Q Did you yourself retain the Rose Law Firm?

1 A No.

2 Q So you were in a position to judge their  
3 work based on your work with them but you were in no  
4 position to judge whether they had any conflicts of  
5 interest with respect to their original retention?

6 A That's correct. I inherited work that they  
7 had already been retained on.

8 Q Is there anything else that may be relevant  
9 to our investigation that you have not told us about  
10 or that I have neglected to cover?

11 A Not that I can recall.

12 MR. DINH: Off the record.

13 (Discussion off the record.)

14 MR. DINH: I'm finished. Thanks.

15 (Whereupon, at 8:48 p.m., the deposition  
16 was concluded.)  
17  
18

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19 KAREN CARMICHAEL  
20  
21  
22

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, BRENDA M. SMONSKEY, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

Brenda Smonskey  
Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 14, 1996





**DEPOSITION OF EDWARD S. KNIGHT  
IN RE: S. RES. 120**

**WEDNESDAY, OCTOBER 25, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of EDWARD S. KNIGHT, called for examination pursuant to notice of deposition, at 1:12 p.m. in Room 534 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

JOHN M. DOWD, Esq.  
AMY E. OVERTON, Esq.  
Akin, Gump, Strauss, Hauer & Feld, L.L.P.  
1333 New Hampshire Avenue, NW  
Suite 400  
Washington DC 20036  
On behalf of the Deponent.

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## P R O C E E D I N G S

Whereupon,

EDWARD S. KNIGHT

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. O'CALLAGHAN:

Q This deposition -- first of all, my name is Michael O'Callaghan. I am counsel for the Majority on the special committee. This deposition is conducted pursuant to Senate Resolution 120. This resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority, and other related matters.

Specifically, section 1(b)2(e) of Senate Resolution 120 authorizes investigation and public hearings into "whether the report issued by the Office of Government Ethics on July 31, 1994 or

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related transcripts of deposition testimony, one, were improperly released to White House officials or others prior to the testimony before the Committee on Banking, Housing and Urban Affairs pursuant to Senate Resolution 229; or two, were used to communicate to White House officials, or to others, confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

And that will be the main focus of today's deposition. What day were you requested to testify by the committee?

MR. DOWD: Let me have that letter.

October 12th.

BY MR. O'CALLAGHAN:

Q This deposition is in advance of public hearings which will likely be in November, and it is likely that you will be asked to testify at the hearing. Today we will ask you a series of questions, you are testifying under oath. If you don't understand a question, let me or Mr. Portnoy know and we will clarify or rephrase the questions.

1 If you need a break, let us know also, we will take a  
2 break.

3 MR. DOWD: Thank you.

4 BY MR. O'CALLAGHAN:

5 Q The stenographer will prepare a record of  
6 questions and answers. The deposition will be  
7 treated as committee confidential until the  
8 commencement of the hearings. We also ask that you  
9 treat the contents of discussion today as  
10 confidential as well.

11 Prior to the hearings you will receive a  
12 letter from the committee telling you that you may  
13 come to the Senate to review the transcript of your  
14 deposition and make any corrections in transcription  
15 on an errata sheet. If you are called to testify at  
16 the public hearing, you will be able to have a  
17 transcript of your deposition four days in advance of  
18 the hearings.

19 You may be represented by counsel. Are you  
20 represented by counsel today?

21 A I am. John Dowd et al., Amy Overton.

22 MR. PORTNOY: Clarify for the record. I

1 gather you are here representing Mr. Knight  
2 individually rather than on behalf of the Department  
3 of Treasury?

4 MR. DOWD: I am not employed by the  
5 Department of Treasury. I am employed by Mr. Knight.

6 MR. PORTNOY: I just wanted to clarify  
7 that.

8 MR. O'CALLAGHAN: Could you state your name  
9 for the record.

10 MR. DOWD: Yes, my name is John M. Dowd and  
11 I am with the law firm of Akin, Gump, Strauss, Hauer  
12 & Feld in Washington, D.C. With me is my colleague  
13 Amy E. Overton, also of the same law firm, and we  
14 represent Mr. Knight.

15 MR. O'CALLAGHAN: Thank you.

16 BY MR. O'CALLAGHAN:

17 Q Objections to the form of the questions  
18 will be noted for the record. Counsel may object on  
19 the grounds of privilege or relevance. The committee  
20 chairman will rule on objections where the witness  
21 refuses to answer the question.

22 Please state and spell your full name for

1 the record.

2 A Edward Stanley Knight, K-n-i-g-h-t.

3 Q Are you aware of the committee's various  
4 document requests to the Department of Treasury in  
5 connection with this deposition?

6 A Yes.

7 Q Did you conduct a search for responsive  
8 documents and notes, reports, memoranda?

9 A Of my own office.

10 Q Correct, or any searches in connection with  
11 that.

12 A As you know, I withdrew from supervision of  
13 the Department's production of documents. To the  
14 degree I have been involved in the production of  
15 documents, it has been from my own office and I  
16 conducted a search of my own office.

17 Q Have all documents been produced?

18 A As far as I know, I produced those to those  
19 who then turned them over to you.

20 Q Are you aware of any documents that were  
21 under your possession, custody or control that were  
22 responsive to the request that have since been lost,

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1 destroyed, or otherwise disposed of?

2 A No, I believe not.

3 Q Have you spoken to anyone other than your  
4 counsel prior to this deposition with regard to the  
5 deposition?

6 A No. Other than the routine telling my  
7 Secretary and others who needed to know that I had to  
8 go to the deposition.

9 Q With regard to scheduling matters for you  
10 today?

11 A Yes. Yes.

12 Q You didn't discuss what the contents of  
13 your testimony might be?

14 A No, I did not. No.

15 Q Just also to facilitate the process today,  
16 I have this tendency to do it as well, but if you  
17 wait until I finish asking the questions, it will  
18 make for a clearer record.

19 Did you review any documents in preparation  
20 for the deposition today?

21 A I did.

22 Q And could you explain the preparation



1 process you went through, as long as it doesn't go  
2 into any consultation you had with your counsel.

3 MR. DOWD: That's where it was so I would  
4 object on those grounds. He met with me. We  
5 reviewed documents of the subject matter that we  
6 believed was going to be covered with respect to the  
7 depositions.

8 MR. O'CALLAGHAN: That's responsive.

9 MR. DOWD: Oh, good.

10 BY MR. O'CALLAGHAN:

11  
12

13 Q Your present business address?

14 A 1500 Pennsylvania Avenue, suite 3000.

15 Q Now, what is your -- who is your present  
16 employer?

17 A The Department of the Treasury.

18 Q What is your present position?

19 A I am the general counsel.

20 Q Could you give me a review of your  
21 employment history since you have graduated from high  
22 school?

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1 A After high school, college at the  
2 University of Texas.

3 Q Excuse me. I apologize. I meant to say  
4 your employment history since you graduated from  
5 college.

6 A Okay, law school, while I was at law school  
7 I was a law clerk at the Federal Energy  
8 Administration. And upon graduating from law school  
9 I became a legislative assistant to then Senator  
10 Lloyd Bentsen in 1976. In May of 1978 I left his  
11 employ and became an associate of Akin, Gump. I  
12 became a partner in January of 1982. I continued to  
13 be employed there, until joining the Treasury  
14 Department, except for a period of time when I took a  
15 leave of absence and was special assistant to Senator  
16 Lloyd Bentsen when he ran for Vice President of the  
17 United States, and --

18 MR. DOWD: What was the date you joined  
19 Treasury?

20 THE WITNESS: I joined Treasury on January  
21 20, 1993. I began as executive secretary, and senior  
22 adviser to Secretary Bentsen.

1 BY MR. O'CALLAGHAN:

2 Q And where did you go to college and law  
3 school?

4 A I attended Tulane University my freshman  
5 year of college, and graduated from the University of  
6 Texas, received an undergraduate degree and a law  
7 degree from the University of Texas.

8 Q During the period March through August  
9 1994, were you employed at Treasury as a -- in the  
10 position of executive secretary?

11 A I was.

12 Q Again, during that time period, March  
13 through August, 1994, who was your -- who did you  
14 report to during that time?

15 A To Secretary Bentsen.

16 Q During that time period, who reported  
17 directly to you?

18 A The office of the executive secretary, the  
19 office of public liaison, and the office of national  
20 security.

21 Q Could you give a quick review of the  
22 organizational structure of the office of executive

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1 secretary, as it was during that time?

2 A I had approximately nine or 10 people who  
3 worked for me, managing the paper flow to and from  
4 the Secretary, and managing the records of the  
5 Department, meaning the records of the Secretary. I  
6 had a half dozen people work for me as public liaison  
7 office, within that office. And the office of the  
8 national security adviser employed about a dozen  
9 people, who managed the written intelligence and  
10 other intelligence that flowed to the Secretary's  
11 office and other officers of the Department.

12 Q Did you have any specific duties or  
13 responsibilities in your role as senior adviser to  
14 the Secretary?

15 A It was to give advice on those matters upon  
16 which he sought my advice.

17 Q When did you first learn that -- actually  
18 let me rephrase it another way. I will try not to  
19 assume anything.

20 Did you hear that Secretary Bentsen asked  
21 the Office of Government Ethics to conduct a review  
22 or analysis of the propriety of White House-Treasury

1 contacts in the spring of 1994?

2 A I did.

3 Q When did you first become aware of that?

4 A March 3rd, 1994.

5 Q How did you become aware of that?

6 A Secretary Bentsen asked my advice as to how  
7 to respond to a story in the Washington Post about  
8 contacts between the White House and the Treasury  
9 Department. We discussed options, and he decided to  
10 turn to the Office of Government Ethics.

11 Q Did he give a specific reason why he  
12 decided to turn to the Office of Government Ethics?

13 A My recollection is that it was because they  
14 had the expertise in ethical matters, and that the  
15 story raised questions about ethics. They were  
16 independent of the Department. And they enjoyed a  
17 good reputation.

18 Q Was it your understanding that the  
19 independency of the OGE was an important factor in  
20 the decision?

21 A Yes.

22 Q And why was that?

1 A I think it was Secretary's judgment that if  
2 it was not perceived as independent, and in fact was  
3 independent, it would not reflect well upon the  
4 Department, and that an investigation needed all the  
5 attributes of independence we could find.

6 Q Is that because the review would concern  
7 individuals who were officials or employed by  
8 Department of Treasury?

9 A That's correct.

10 Q At least, that's one of the reasons; I  
11 don't want to say it is exclusive.

12 When did Secretary Bentsen make the request  
13 of the Department -- the Office of Government Ethics?

14 A I believe that day he wrote a letter to  
15 Mr. Potts, the head of the Office of Government  
16 Ethics, asking them to look into this matter.

17 Q And how did they responds?

18 A I believe he spoke with Mr. Potts, or  
19 someone did, and they said they could help us.

20 Q Was the review able to go on at that point,  
21 March, early March period?

22 A No.

1 Q And why is that?

2 A On March 4th we received a subpoena from  
3 the independent counsel, Mr. Fiske, asking for the  
4 production of documents, and indicating that he was  
5 beginning an investigation of his own. And in fact,  
6 he later asked that the OGE suspend its investigation  
7 until he was through.

8 Q When did he complete his investigation?

9 A I believe it was June 30th.

10 MR. DOWD: He being Fiske.

11 MR. O'CALLAGHAN: Correct.

12 THE WITNESS: At least he finished with the  
13 interviews.

14 BY MR. O'CALLAGHAN:

15 Q Between the March and June time period, was  
16 there any preparation done in anticipation of an  
17 investigation or review, with regard to the  
18 Secretary's request, done by the people at Treasury?

19 A Our total focus from March 3rd was to  
20 cooperate with everyone that was looking at this, and  
21 to insure that we had the most pristine process of  
22 investigation and action following the

1 investigation. Therefore, on March 4, in response to  
2 the Fiske subpoena, we brought in a dozen  
3 investigators from the IRS who conducted the search  
4 for documents, who were law enforcement personnel,  
5 and they physically did the search.

6 We searched the hard drives of all the  
7 offices. We erred on the side of production when  
8 there was a question as to any document. And our  
9 focus during that period was to insure that the  
10 process of cooperation with the independent counsel  
11 in any way was as positive as possible.

12 Q Was there a specific investigation that was  
13 conducted to assist the OGE in conducting their  
14 analysis of the propriety of the contacts?

15 A The Office of Government Ethics requested  
16 the assistance of the Inspector General at Treasury.

17 Q Okay. Did they request the assistance of  
18 the IG's office of any other agency?

19 A From that point, I believe, they -- either  
20 they did or the IG themselves turned to the RTC; I am  
21 not sure how that happened.

22 Q You don't know, okay.

1           When the investigation did commence, is it  
2 your understanding that it was conducted by both the  
3 Treasury IG's office and the RTC IG's office?

4           A    That's my understanding.

5           Q    During the period June 30 through, say,  
6 August 1st, 1994 -- and most of my questions from now  
7 on will be for that time period unless I specify  
8 otherwise.

9           MR. DOWD: June 30 to August 4?

10          MR. O'CALLAGHAN: August 1st.

11          MR. DOWD: Essentially the month of July.

12          MR. O'CALLAGHAN: Essentially. I just want  
13 to cover both ends.

14          BY MR. O'CALLAGHAN:

15          Q    During that time period, did you have any  
16 responsibilities that involved review of the White  
17 House-Treasury contacts that were being looked at by  
18 the two IG's offices?

19          A    My responsibilities related to being the  
20 custodian of the records of the Department, the  
21 Secretary's records. And as such, I received the  
22 subpoena for the Department from the independent

1   counsel. And the Secretary was recipient of a number  
2 of requests from other entities doing  
3 investigations. The House Banking Committee, the  
4 Senate Banking Committee, the Inspector General, and  
5 the White House were doing an investigation.

6           We had to respond to all these requests,  
7 and they were written to the Secretary.

8          Q    During this time, did you have any  
9 responsibilities with regard to preparing people for  
10 prospective Congressional testimony?

11          A    Secretary Bentsen.

12          Q    What type of assistance was it your  
13 understanding you were expected to provide the  
14 Secretary with, with regard to preparation for his  
15 testimony?

16          MR. DOWD: Objection; relevance. This is  
17 not on the subject. We are off the subject. It has  
18 nothing to do with OGE, nothing to do with the  
19 release of transcripts.

20          MR. O'CALLAGHAN: The relevance is with  
21 regard to Mr. Knight's activities, do you recollect  
22 the time period that the transcripts were being



1 prepared, and with regard to the IG's investigation,  
2 and I am going to, if I can continue on the line of  
3 questioning, flesh out the type of information that  
4 Mr. Knight had access to, was available to him, and  
5 utilized, and the different duties and  
6 responsibilities that he had during the relevant time  
7 period.

8 MR. DOWD: But the issue is whether the OGE  
9 report and release of the transcripts was proper or  
10 improper. That's got nothing to do with that. How  
11 he briefed Secretary Bentsen, how he prepared him has  
12 nothing to do with that. We are way off the mark;  
13 with all due respect, we are not even on the  
14 subject. That's what I was afraid we were going to  
15 waste our time doing. I mean that's not what you  
16 said you were going to do, that's not what  
17 Mr. Giuffra said he was going to do.

18 He is prepared to testify about the other  
19 stuff. If you want those subjects, let's get another  
20 day to do it. Let's talk to the chairman about it.  
21 I don't want to --

22 MR. O'CALLAGHAN: Mr. Dowd, with all due

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1 respect --

2 MR. DOWD: On your theory, Mr. O'Callaghan,  
3 you can ask him about every day he was at Treasury.  
4 That's not relevant. We are not examining  
5 Mr. Knight's conduct.

6 MR. O'CALLAGHAN: Right now we are  
7 examining -- what I am attempting to do is get an  
8 idea and flesh out an understanding as to what the  
9 status is of the different documents that are the  
10 subject of this deposition, and where they were held,  
11 and looking at different areas that are relevant to  
12 whether or not they were improperly transferred to  
13 anyone.

14 MR. DOWD: That's not what he is talking  
15 about here. He says whether the report issued by OGE  
16 on July 31, 1994 or related transcripts of deposition  
17 testimony were improperly released to White House  
18 officials. You haven't asked one question on that  
19 yet. You asked about OGE. They started an  
20 investigation because Secretary Bentsen asked them  
21 to. It has nothing to do with the preparation of the  
22 Secretary for his Congressional testimony.

1 I object. I think we ought to move on to  
2 the subjects that you and Mr. Giuffra said that you  
3 would cover.

4 MR. O'CALLAGHAN: Well, in my conversation  
5 to you, I said I was going to cover the scope that's  
6 covered within the resolution.

7 MR. DOWD: Look, I've got a note from you  
8 right here -- and we can make it part of the record  
9 if you want -- it says "subject of deposition," has  
10 been highlighted, section 1(b)2(e), that's the one I  
11 just read.

12 MR. O'CALLAGHAN: That's what I am  
13 referring to.

14 MR. DOWD: That does not cover -- why don't  
15 you get to it. Let's talk about the release of the  
16 transcripts. Let's talk about the OGE.

17 MR. O'CALLAGHAN: With all due respect,  
18 Mr. Dowd, I will not have you control my line of  
19 inquiry.

20 MR. DOWD: I object. I will seek a ruling  
21 from the chairman. I object; it is irrelevant.

22 MR. O'CALLAGHAN: If you want, we can break

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22

1 and I will go get a ruling from the chairman.

2 MR. DOWD: Keep going. We will get rulings  
3 from the chairman.

4 MR. O'CALLAGHAN: Could you read back my  
5 last question.

6 (The reporter read the record as requested.)

7 BY MR. O'CALLAGHAN:

8 Q If you want, I will try to accommodate  
9 Mr. Dowd and try to make it a little more -- the  
10 question a little more specific.

11 Were you involved in information gathering  
12 with respect to preparing the Secretary for his  
13 testimony?

14 A We did no independent information gathering  
15 out of the Secretary's office. The information was  
16 gathered by the independent Office of the Inspector  
17 General, and by other bodies --

18 Q I'm sorry --

19 A We did not do an investigation out of the  
20 Secretary's office of these matters.

21 Q I was trying to get an idea for what type  
22 of materials you used to prepare -- used to prepare

1 the Secretary for testimony, and whether any  
2 materials from the IG investigation were used  
3 specifically.

4 A No. No depositions were used, if that's  
5 the question.

6 Q That's not the question. Were any  
7 materials from the IG's investigation used?

8 A The IG's report, when it was made public,  
9 was relevant to the Secretary's testimony, and I  
10 believe that was in the Senate testimony he referred  
11 to the Office of Government Ethics final report and  
12 the accompanying IG report. At that point that was  
13 used. Up to that point it wasn't relevant.

14 MR. DOWD: What was the time frame of  
15 that?

16 THE WITNESS: I believe the House had a  
17 hearing --

18 MR. DOWD: Making the IG's report public,  
19 when did that happen?

20 THE WITNESS: Around August 1st, right  
21 before the Senate hearing.

22 MR. DOWD: So he read that.

1 THE WITNESS: I think he read the report  
2 itself, yes. I don't know that he read the  
3 underlying IG report. The IG report was a factual  
4 statement, a statement of facts they gathered. Of  
5 much more interest was the Office of Government  
6 Ethics.

7 BY MR. O'CALLAGHAN:

8 Q Okay. Was the IG's report a chronology of  
9 facts that had been gleaned from the transcripts  
10 produced by the IG's office?

11 A I assume so. I don't know what  
12 investigatory methods they used.

13 Q Have you ever been told, ever learned?

14 A No.

15 Q When did you first see a copy of the -- any  
16 copy of the IG report?

17 A At the time it was delivered to the  
18 Secretary.

19 Q Okay.

20 A Let me just make a statement as to my  
21 contacts and policy that I had, and I assume the  
22 Secretary had -- I know he did -- with regard to the

1 IG. We did not communicate with them at all, unless  
2 asked. We did not initiate any communication with  
3 any of their personnel, out of the Secretary's  
4 office, while this investigation was going on.

5 Q During this time period, did you have any  
6 communication with the counsel to the IG?

7 A No. Well, it's possible, but I don't have  
8 any clear recollection. I don't -- I really don't  
9 remember.

10 Q Did you ever learn that the office of  
11 administrative and general law was provided with  
12 unredacted copies of the transcripts before the IG  
13 investigation was completed?

14 A No.

15 MR. DOWD: That was the office of what?

16 MR. O'CALLAGHAN: Administrative and  
17 general law.

18 THE WITNESS: It is called general law and  
19 ethics, now.

20 MR. DOWD: U.S. Treasury.

21 MR. O'CALLAGHAN: Correct.

22 MR. PORTNOY: Off the record for a minute.

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26

1 (Discussion off the record.)

2 BY MR. O'CALLAGHAN:

3 Q During the time period that we are  
4 discussing, did you have any contact with Kenneth  
5 Schmalzbach?

6 A Yes. Ken Schmalzbach is the assistant  
7 general counsel, as I said, for general law and  
8 ethics now. That's, I think, a more accurate  
9 description of his duties.

10 Q But during that time period, he was the  
11 assistant general counsel for administrative and  
12 general law; is that correct?

13 A It is the same position, different title.

14 Q Okay, yes.

15 A I am emphasizing that his responsibility,  
16 then and now, primarily was in the ethics area and  
17 that we were very concerned about ethical issues in  
18 the handling of all these requests issues, and  
19 that's, therefore, the reason why we consulted with  
20 Ken and his colleagues.

21 Q How frequently were you in contact with  
22 Mr. Schmalzbach or his office during the time period?

1 A With regard to the depositions, on -- I  
2 had, at the most, one conversation on this subject,  
3 one or two.

4 Q Okay. Did you have any conversations with  
5 regard to any drafts of the IG's chronology or report  
6 with Mr. Schmalzbach?

7 A No.

8 Q Do you recall, was the conversation you had  
9 with him with regard to the transcripts?

10 A It is possible. I spoke with lawyers about  
11 the subject of the transcripts; which communicated  
12 with me on that, I really can't remember.

13 Q Do you recall when --

14 A It is more than likely it was Ken or Steve,  
15 if only because Steve later wrote the protective  
16 letter with regard to the handling of those  
17 transcripts.

18 Q When did this conversation take place?

19 A Sometime around July 22, 23.

20 Q What was the subject of the conversation?

21 A Either he or Bob Cesca himself communicated  
22 to me that the acting IG wanted the Secretary's

1 opinion with regard to whether we should share the  
2 transcripts with the White House counsel's office.

3 Q And who was the acting IG at the time?

4 A Robert Cesca. I think it is C-e-s-c-a.

5 Q You are correct.

6 Do you recall what time of day this  
7 conversation occurred?

8 A I don't.

9 Q I have a document that may or may not help  
10 to refresh your recollection.

11 I will show it to you and your counsel.

12 A As I said, it's around July 22nd or 23rd;  
13 the letter is dated July 23rd.

14 Q I will identify the document for the record  
15 as well; Bates stamp 6877, a one-page letter on  
16 Department of Treasury letterhead dated July 23,  
17 1994, says "delivery by hand, Jane Sherburne  
18 Esquire," and it is from Stephen J. McHale.

19 Do you know whether your conversation  
20 occurred the day that this letter was transmitted?

21 A I can't remember. There was a request for  
22 the Secretary's opinion -- I am guessing now but my



1 guess is, between that; I consulted with the lawyers  
2 before passing on that request to the Secretary, that  
3 there was not a legal problem.

4 Q What lawyer did you consult with?

5 A I don't know which ones. It was either --  
6 my guess is Steve or Ken or Bob.

7 Q Steve is Steve McHale?

8 A Steve McHale.

9 Q Ken is Ken Schmalzbach?

10 A Right, or Bob McNamara. And once I learned  
11 that there was not a legal objection, I asked the  
12 Secretary his opinion, and then I communicated that  
13 back to someone. I assume -- I am almost certain it  
14 was Bob Cesca himself, but I am not sure.

15 Q Did this all happen in the same day?

16 A I can't be certain. It is within a few  
17 days, 48-, 72-hour period. There were many other  
18 things going on.

19 Q When you returned Mr. Cesca's call --

20 MR. PORTNOY: I believe the testimony was  
21 Mr. Cesca called, somebody called.

22 BY MR. O'CALLAGHAN:

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1 Q Did you say you believed you called  
2 Mr. Cesca back?

3 A There was a conversation with Mr. Cesca to  
4 the effect that the Secretary believes we should  
5 cooperate with the counsel's office. And Mr. Cesca  
6 said something like I do, too. We have received a  
7 lot of cooperation from them. I clearly remember him  
8 opining that, from his perspective as acting  
9 Inspector General, the White House had cooperated  
10 with him.

11 Q Were you at work when you had the  
12 conversation?

13 A With Bob Cesca?

14 Q Right.

15 A I assume so. I was at work all the time  
16 anyway, so --

17 Q Whether or not this helps your  
18 recollection, I believe the 23rd was a Saturday.

19 A Right, and I believe Secretary Bentsen was  
20 in Texas that weekend, and we usually worked weekends  
21 at Treasury, as I know you do in the Senate.

22 Q Do you remember if you were wearing a suit

1 or you were in casual clothes when you had any of  
2 these conversations?

3 A I don't. And I recall -- I believe the  
4 Cesca conversation I remember clearly was over the  
5 phone.

6 Q In which the White House counsel's office  
7 made requests for transcripts?

8 A I don't know. I was not the recipient of  
9 that request.

10 Q Were you ever told?

11 A No.

12 Q Had you ever been asked for copies of  
13 transcripts from any of the -- anyone in the White  
14 House counsel's office previously?

15 A No, no, I did not talk with them during  
16 that period.

17 Q During the period, the whole month of July  
18 or during specifically --

19 A July, I never talked to them.

20 Q On this subject or just you didn't talk to  
21 them at all?

22 A I didn't talk to them at all. I don't

1 recall talking to them at all.

2 MR. DOWD: Are we going to mark this as an  
3 exhibit to the deposition?

4 MR. O'CALLAGHAN: We don't mark copies of  
5 documents discussed during the deposition  
6 and to preserve the confidentiality of the documents,  
7 rather we refer to them with regard to the Bates  
8 stamp numbers or other identifying features.

9 MR. DOWD: In the event Mr. Knight is  
10 called as a witness, will we have copies of these  
11 documents to look at in reading his testimony,  
12 whether they be available? It seems to me it is now  
13 part of this deposition in a sense.

14 MR. PORTNOY: If Mr. Knight is called --

15 MR. DOWD: It doesn't need to be attached  
16 but as long as it is available so when he reviews his  
17 testimony, he reviews the documents also.

18 MR. PORTNOY: If Mr. Knight is called to  
19 testify, his deposition will be made available to him  
20 at a secure place at such time. I don't believe  
21 there would be any difficulty in providing to  
22 Mr. Knight any documents referred to in his

1 deposition, as has been the committee's practice  
2 heretofore.

3 But I must say the committee has not, to  
4 either of our knowledge, formally established  
5 procedures for the next round of hearings, so I can't  
6 assure you what the committee will do. I can only  
7 tell you what they have done in the past.

8 MR. DOWD: I thought he received a copy of  
9 his deposition if he was called, obviously. I don't  
10 mean to hold you up.

11 MR. O'CALLAGHAN: If he is actually called,  
12 he will receive a copy of it four days before.

13 MR. DOWD: What?

14 MR. O'CALLAGHAN: If he is specifically  
15 called, he will get a copy four days before, and if  
16 there are hearings with regard to this issue, he will  
17 be afforded the opportunity to come down and look at  
18 his transcripts and make corrections to it.

19 MR. PORTNOY: Those are separate  
20 procedures. Do you understand?

21 MR. DOWD: I understand.

22 MR. PORTNOY: I was not sure we were being

---

1 clear.

2 MR. DOWD: I appreciate that. Thanks.

3 MR. O'CALLAGHAN: Certainly.

4 BY MR. O'CALLAGHAN:

5 Q I would like to show you a one-page  
6 document, Bates stamp S 0077845. We are going to  
7 share that. It is a highly confidential document I  
8 am not permitted to copy. Let me know when you have  
9 had a chance to review it and then I will identify  
10 it.

11 MR. DOWD: Go ahead.

12 BY MR. O'CALLAGHAN:

13 Q It is a one-page document, portion of an  
14 appointment book for the date Wednesday, July 6,  
15 1994. I believe there is a single entry there, looks  
16 like 11:30, the entry there, Ed Knight and Bob  
17 McNamara. Do you recall having a meeting with  
18 Mr. Cutler on July 6, 1994?

19 A No.

20 Q Did you have a meeting with Mr. Cutler July  
21 6, 1994?

22 A No, I met -- no, I didn't.

1 Q Did you have any meetings on July 6, 1994,  
2 that you recall?

3 A Not that are relevant to this. Only  
4 meeting I had with Lloyd Cutler was in May. Oh, no  
5 wait a minute. I did.

6 Q Just so you are clear --

7 MR. DOWD: Wait a minute.

8 MR. O'CALLAGHAN: Sure.

9 THE WITNESS: We, as the committee knows,  
10 and as the independent counsel knows, we shared some  
11 of the records of the Department with the White House  
12 counsel's office, documents which we shared with the  
13 House and the Senate, similar documents, relating to  
14 this. There were some very sensitive documents that  
15 we did not want to leave at the White House, or we  
16 didn't want anyone else to see other than Mr. Cutler,  
17 and the agreement was that Mr. Cutler would view them  
18 and only Mr. Cutler. And I think I took over a set  
19 of those documents. That might have been then. I  
20 don't -- I just don't remember.

21 Q Do you recall going over with Mr. McNamara  
22 at any time; does that help?

1 A That might have been in the context of  
2 this. I just -- it is possible.

3 Q Did you have any discussions with  
4 Mr. Cutler during that meeting with regard to the  
5 transcripts --

6 A No.

7 Q -- involving the IG's investigation?

8 A No, there were very few words spoken at  
9 that meeting. That's why I don't remember.

10 It was a ministerial meeting.

11 MR. DOWD: These were sensitive documents.

12 THE WITNESS: Yes. Documents which the  
13 committee has.

14 BY MR. O'CALLAGHAN:

15 Q Did you have any discussions with  
16 Mr. Schmalzbach about this meeting, once again as far  
17 as you remember?

18 A There was nothing to discuss. It was not a  
19 meeting. It was a delivery and a retrieval.

20 Q Okay. Again for purposes of refreshing  
21 your recollection, this is a document, Bates stamp  
22 11432. It is a one-page document that bears

1 redactions. I can represent to you this was a  
2 notebook or copies of the pages of a notebook  
3 Mr. Schmalzbach maintained.

4 Have you ever seen this document before?

5 A No.

6 Q Are you familiar with Mr. Schmalzbach's  
7 handwriting?

8 A Yes.

9 Q Is that his handwriting that appears in the  
10 document?

11 A I don't know that it is not.

12 Q Okay. Anyway, just for purposes of  
13 refreshing your recollection, does this refresh your  
14 recollection as to whether you spoke to  
15 Mr. Schmalzbach about the meeting with Mr. Cutler?

16 A I don't think I spoke to him about it. I  
17 might have spoken to him before going over. Again,  
18 this was a process that was anticipated in the letter  
19 that Joel Klein wrote to me about the custody of  
20 these documents, and it was something that was  
21 expected to occur at some point.

22 MR. O'CALLAGHAN: Why don't we go off the

---

1 record for a second.

2 (Discussion off the record.)

3 MR. O'CALLAGHAN: For the record, I didn't  
4 fully identify the document, 11432, copy of a spiral  
5 bound notebook with the initials EK at the top, date  
6 7/6.

7 Thanks.

8 BY MR. O'CALLAGHAN:

9 Q Are you aware if Mr. Cutler ever made a  
10 request to Secretary Bentsen to receive copies of the  
11 transcripts?

12 A I am not aware.

13 Q Have you ever heard that he did?

14 A No.

15 MR. DOWD: Ask your question again, will  
16 you?

17 MR. O'CALLAGHAN: Sure.

18 BY MR. O'CALLAGHAN:

19 Q Have you ever learned that Secretary --  
20 excuse me, that Mr. Cutler requested copies of the  
21 transcripts from Secretary Bentsen?

22 A The IG deposition transcripts, no.



1 Q I would like to show you a copy of a  
2 document which bears Bates -- difficult to read,  
3 10737. I will show it to you and counsel. Let me  
4 know when you have had a chance to review it.

5 A Right.

6 Q The document I just referred to is a letter  
7 dated October 26, 19 --

8 MR. DOWD: Can we take a break for a  
9 minute. I want to talk to Mr. Knight.

10 MR. O'CALLAGHAN: Sure. Why don't we go  
11 off the record.

12 (Discussion off the record.)

13 MR. O'CALLAGHAN: Back on the record.  
14 Before we went off the record, I showed you a copy of  
15 document 10737 which is an October 26, 1994 letter,  
16 addressed to J. William Codinha, and it is signed by  
17 Robert M. McNamara, Jr.

18 I would like to direct your attention to  
19 the second to last sentence, in the letter which  
20 begins "the answer to this question is the  
21 following" -- actually, excuse me. I will read the  
22 whole paragraph.

1 It begins, the second item is a question by  
2 Senator Shelby, contained on page 71 of the  
3 transcript, regarding the date on which former White  
4 House Counsel Lloyd Cutler asked for copies of the  
5 transcripts of interviews taken by the Treasury  
6 Inspector General.

7 The answer to this question is the  
8 following: "Mr. Cutler's request was first made on  
9 July 5th, 1994, and renewed late in July."

10 Does this refresh your recollection, as to  
11 when, and also if, Mr. Cutler made a request to  
12 Mr. Bentsen for the transcripts?

13 A No, it doesn't change my testimony.

14 I am personally unaware of any request that  
15 was made by Lloyd Cutler on July 5th. I only point  
16 out that others in his name may have made the request  
17 to others than me on take date. But as far as a  
18 request coming to me or to the Secretary, I am aware  
19 of none.

20 Q Okay. Are you aware how Mr. McNamara got  
21 the basic knowledge for the statement in this letter,  
22 with regard to Mr. Cutler's request?

1 A I am speculating but it could be that an  
2 attorney who worked for Mr. Cutler made such a  
3 request to an attorney in the Office of General  
4 Counsel. I was not general counsel at the time.

5 MR. DOWD: I am not even clear whose  
6 transcript it is. Whose transcript is it?

7 MR. O'CALLAGHAN: I believe it is the  
8 Secretary's transcript of his testimony that he gave  
9 on August 3rd, 1994, before the committee.

10 BY MR. O'CALLAGHAN:

11 Q Are you aware of any requests that were  
12 made by anyone in the White House counsel's office to  
13 the Office of the Secretary for transcripts in July  
14 of 1994?

15 A Those requests were not to the Secretary,  
16 as I understood them.

17 Q But to anyone in the Secretary's office?

18 A No. No, I am not.

19 Q Are you aware of any requests by the White  
20 House counsel's office in July of 1994 to anyone at  
21 Treasury or any office of Treasury?

22 A Either -- around July 22 or July 23, there

1 was a request, and I became aware of it, when the  
2 acting IG wanted Secretary Bentsen's opinion.

3 Q And that's the first time you were ever  
4 questioned by White House counsel's office?

5 A Yes.

6 Q I asked you earlier about any contact you  
7 had with the White House counsel's office, and we  
8 have now identified you possibly had one on July the  
9 6th. Did you have any phone conversations with  
10 anyone in the counsel's office in July?

11 A They were not calling me. No, I can't  
12 remember any.

13 Q It is not a memory test. I have something  
14 that may -- it is a memory test, but I might have  
15 something that might help you with your  
16 recollection.

17 Document Bates stamped S 007922, it is a  
18 one-page document which is entitled "phone list,  
19 office of special counsel, President, July 15,  
20 1994." Take a moment to review that.

21 MR. PORTNOY: The date again?

22 MR. O'CALLAGHAN: July 15, 1994.

1 THE WITNESS: Do you know whose phone log  
2 this is? Is it Lloyd Cutler's?

3 MR. O'CALLAGHAN: I believe it is the  
4 Office of Special Counsel to the President. I don't  
5 know if it is specifically identified.

6 THE WITNESS: Because that could be Joel  
7 Klein's phone list.

8 BY MR. O'CALLAGHAN:

9 Q For the record, there is a number 24 -- the  
10 rest of the page appears to have been redacted -- and  
11 it says "Ed Knight called 622-0027." You said that  
12 could be whose number?

13 A Joel Klein's phone number.

14 Q Who is Joel Klein?

15 A He was deputy counsel to the President.  
16 K-l-e-i-n.

17 Q So he was a member of the Office of Special  
18 Counsel to the President?

19 A I am not sure what his -- I mean at that  
20 point, I think Mr. Cutler was also acting counsel to  
21 the President. Whatever. Joel Klein had throughout  
22 this period, I believe, the title of deputy counsel

1 to the President.

2 Q Did you have any -- do you recall a  
3 conversation with Mr. Klein on the 15th of July?

4 A It is possible. It is possible.

5 Q Any conversation regarding transcripts from  
6 the IG's investigation?

7 A No, no.

8 Q Any possibility you might have spoken with  
9 anyone else in the White House counsel's office?

10 A I am -- I am speculating, and I do not have  
11 a clear recollection, but it could have been he was  
12 asking for access to the same sensitive documents  
13 that Mr. Cutler had received access to.

14 Q Did you have any contact with Jane?

15 MR. DOWD: Who was special counsel to the  
16 President?

17 THE WITNESS: That's Lloyd Cutler's title.

18 MR. PORTNOY: Let's go off the record.

19 (Discussion off the record.)

20 BY MR. O'CALLAGHAN:

21 Q My next question, that I was beginning to  
22 ask, is whether or not you had any conversations with

1 Jane Sherburne during July of 1994?

2 A No.

3 Q During July of 1994, did you have more than  
4 one conversation with Mr. Klein?

5 A No. I didn't even remember that one until  
6 you -- if that's what that is. There are other  
7 reasons I could have called the counsel's office  
8 outside of Whitewater too. We had just taken a trip  
9 with the President of the United States during the  
10 month of July to Europe. There were other reasons.

11 Q But do you recall making calls to that  
12 office --

13 A No, I don't.

14 Q -- over those issues?

15 A I don't recall initiating a call to that  
16 office. I may have been returning a call.

17 Q Okay. I am going to show you some more  
18 documents, just to see if it helps your  
19 recollection.

20 This one is Bates stamped S 0077923, phone  
21 list, Office of Special Counsel to the President,  
22 July 18, 1994 and there is an entry, number 6 says

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1 "left word for Ed Knight," and it says 622-0027 by  
2 an entry that says "talked"?

3 A Again, it could be matters totally off  
4 this.

5 MR. DOWD: We don't know. You don't know?

6 THE WITNESS: I don't know.

7 BY MR. O'CALLAGHAN:

8 Q So you have no recollection; is that  
9 correct?

10 A I am almost positive it was not Lloyd  
11 Cutler.

12 Q And you say you didn't speak with Jane  
13 Sherburne?

14 A No.

15 Q I am going to show you S 007924 which is a  
16 similar document, one-page phone list, Office of  
17 Special Counsel of the President, July 20, 1994, and  
18 has two entries, one I would like to direct your  
19 attention to is number 4 and it says "talked to Ed  
20 Knight," that's July 20.

21 Do you have any recollection of talking to  
22 the White House July 20th?

1 A No. Again I want to make it clear, you are  
2 not asking me with regard to a specific person.

3 MR. DOWD: Just answer the question.

4 BY MR. O'CALLAGHAN:

5 Q I was asking anyone in the White House or  
6 White House counsel's office.

7 A I don't remember, no.

8 MR. DOWD: We don't know whose list this  
9 is.

10 BY MR. O'CALLAGHAN:

11 Q We may have an index for it. I will have  
12 to check. And if we do, when we take a break, I will  
13 come back and inform you.

14 MR. DOWD: It would help.

15 MR. PORTNOY: Why don't we take a break and  
16 you can call your office and ask them to pull it.

17 MR. O'CALLAGHAN: Okay, let's take a quick  
18 break.

19 (Recess.)

20 BY MR. O'CALLAGHAN:

21 Q Right before we went off the record, the  
22 question was asked who in the counsel's office phone

1 logs these are, and representation has been made to  
2 the committee from the White House that these are  
3 Lloyd Cutler's phone logs. Does that help refresh  
4 your recollection at all?

5 A I do not remember calling him.

6 Q I ask you if you recall calling anyone in  
7 his office?

8 A Well, his office includes a number of  
9 people, all the attorneys in the White House  
10 counsel's office. I don't know what -- if you are  
11 telling me that that's a log from his office, then it  
12 could be to any of those attorneys, and I can't  
13 answer a question with regard to any attorney in the  
14 White House counsel's office. There are just too  
15 many people.

16 Q Did you speak with any of those attorneys  
17 during July of '94?

18 A I don't recall.

19 Q Do you normally have contact with the White  
20 House counsel's office attorneys?

21 MR. DOWD: You mean during that time, July  
22 1994?



1 THE WITNESS: At that time it was not an  
2 office I spoke to often. I don't know their phone  
3 system. I think if you call any lawyer over there,  
4 it flips to their office.

5 BY MR. O'CALLAGHAN:

6 Q The question I asked you earlier was  
7 whether you had any conversations with anyone at the  
8 White House --

9 A Anywhere July of 1994?

10 Q Correct.

11 A I can't tell you that. I assume I had some  
12 conversations with someone at the White House in July  
13 of '94.

14 Q Did you have any conversation with any  
15 lawyers that had any affiliation with counsel's  
16 office?

17 A I just don't remember.

18 Q Did you have any conversations with any  
19 counsel or lawyers at the White House with regard to  
20 document productions or exchange of documents?

21 A No, I was not dealing with the lawyers in  
22 the White House, dealing with this subject on a daily

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1 basis.

2 Q Well, on any basis.

3 A I have no recollection of talking to Lloyd  
4 Cutler, who is the only -- Lloyd Cutler, in this  
5 period at all. It is possible I might have had  
6 another conversation with other attorneys there, but  
7 I don't recall.

8 Q Do you recall that you didn't have  
9 conversations with attorneys at the White House?

10 A I recall that I had very limited contact  
11 with anyone in the White House counsel's office on  
12 this subject.

13 Q But you had some contact?

14 A At the beginning of the process. This was  
15 towards the end of the process, and I did not.

16 Q What was your contact at the beginning of  
17 the process?

18 A It wasn't in relation to these  
19 depositions.

20 Q Was it in relation to --

21 A There is a letter you have from Joel Klein  
22 to me about the custody of documents, and there were

1 conversations about that. That was back in May. The  
2 document you previously showed me, wasn't that in  
3 May, from Joel Klein to me?

4 Q I am not sure I showed you --

5 A That first document.

6 Q This is a Robert McNamara letter. Do you  
7 have any knowledge of when Mr. Schmalzbach or anyone  
8 he supervised first received copies of transcript  
9 from the IG's investigation?

10 A Again, I didn't supervise these people; I  
11 was not general counsel.

12 MR. DOWD: Answer the question first and  
13 then explain. You are not answering the question.

14 THE WITNESS: What's the question?

15 BY MR. O'CALLAGHAN:

16 Q The question is, did you ever learn when  
17 either Mr. Schmalzbach or anyone he supervised first  
18 received copies of the transcripts?

19 A Anyone he supervised first -- no. I --  
20 have no knowledge about that.

21 Q How about when he first received copies of  
22 the transcript?

1 A I have no knowledge of that.

2 Q Did he ever tell you that he received  
3 copies of the transcript?

4 A No.

5 Q Did you ever learn that anyone at the  
6 Department of Treasury, outside the IG's office,  
7 received copies of the IG's transcripts before they  
8 were publicly released?

9 A I have no recollection of that.

10 MR. DOWD: Would you read back that  
11 question, please.

12 (The reporter read the record as requested.)

13 BY MR. O'CALLAGHAN:

14 Q Are you aware of any conversations between  
15 Mr. Schmalzbach and Secretary Bentsen with regard to  
16 the transcripts in July of 1994?

17 A No.

18 Q I would like to show you a document which  
19 is Bates stamped 366. That is a one-page document  
20 which bears the title "interoffice memorandum." Date  
21 is 18 July 1994. It is from Francine Kerner to James  
22 Cottos, and subject is delivery of transcripts. Let

1 me know when you have had a chance to review it.

2 A Okay.

3 Q First of all, have you seen this document  
4 before?

5 A No.

6 Q For the record, I will read the first two  
7 paragraphs. "In accordance with our discussion  
8 earlier today I permitted the office of the assistant  
9 general counsel for administration to copy and retain  
10 for their use the witness transcripts in my  
11 possession. Ken Schmalzbach, the assistant general  
12 counsel for administration, has advised me that  
13 Secretary Bentsen will not permit these transcripts  
14 to be shared among agency employees until the Senate  
15 Banking Committee completes its depositions."

16 MR. DOWD: It is depositions plural;  
17 right?

18 MR. O'CALLAGHAN: Yes.

19 BY MR. O'CALLAGHAN:

20 Q After reading that portion of the document,  
21 does that refresh your recollection whether you ever  
22 heard of a conversation between Mr. Schmalzbach and

1 Secretary Bentsen with regard to the transcripts?

2 A No, no.

3 Q Would it have been a normal practice for  
4 Mr. Schmalzbach to have conversations with the  
5 Secretary with regard to handling of documents?

6 A This doesn't necessarily reflect a direct  
7 conversation with Secretary Bentsen.

8 Q Do you know whether Mr. Schmalzbach had any  
9 conversations with anyone in the Secretary's office  
10 with regard to use of the transcripts that -- with  
11 regard to the use of the transcripts?

12 A At the time that this was done, the general  
13 rule that this committee and other committees were  
14 imposing upon the Administration was that transcripts  
15 would not be shared amongst witnesses until final.  
16 This could just reflect what was the routine  
17 procedure with regard to transcripts.

18 Q Okay, but the specific question is whether  
19 you are aware of any conversations between  
20 Schmalzbach and Office of the Secretary?

21 A No, no.

22 Q Did your office ever make a request to

1 receive copies of the transcripts from the IG's  
2 office? That's the first question.

3 A Not until they were final.

4 Q Anyone in your office make a request for  
5 copies of the transcripts from Mr. Schmalzbach or  
6 anyone in his office?

7 A No.

8 Q Anyone from your office make requests to  
9 Mr. McNamara or anyone in his office for copies of  
10 the transcripts?

11 A No.

12 Q I don't think I have asked this question,  
13 but if I have, please let me know. I am sure  
14 Mr. Dowd will let me know.

15 The question is when did you or anyone you  
16 supervised first receive copies of the transcripts?

17 A I believe --

18 Q I'm sorry. I am referring to unredacted  
19 copies of transcripts.

20 A I don't recall receiving the transcripts  
21 ever.

22 Q But --

1 A Now, when they were received, they would  
2 have been received by the office of executive  
3 secretary. They would have been logged in to the  
4 Secretary.

5 MR. DOWD: When?

6 THE WITNESS: Whenever delivered, and you  
7 should have a record of that.

8 I wouldn't receive them independent of the  
9 Secretary. When the IG decided that they were  
10 suitable to share with the Secretary, they would have  
11 produced them, as is the normal procedure with an IG  
12 investigation. I just don't know when that  
13 occurred.

14 BY MR. O'CALLAGHAN:

15 Q You don't know when the IG made the  
16 determination it was suitable to show them to the  
17 Secretary?

18 A My recollection is what we received was the  
19 final report. And I don't know of any interest the  
20 Secretary had in reading transcripts.

21 Q Did you say you never reviewed the  
22 transcripts personally?

1 A I don't recall reviewing them.

2 Q Just so I am clear also -- I want to be  
3 sure I phrase my questions properly -- but the  
4 executive secretary -- office of the executive  
5 secretary is part of the Office of the Secretary; is  
6 that correct?

7 A That's correct.

8 Q Was the Office of the Secretary ever  
9 informed that Mr. Schmalzbach's office received  
10 copies of transcripts?

11 A No.

12 Q At no time?

13 A No.

14 Q I would like to show you a document which  
15 bears the Bates stamp 015645 and 015646. It is  
16 difficult to read; numerous copying. It is a  
17 two-page document. I show it to you and your  
18 counsel. Let me know when you have had a chance to  
19 review it.

20 MR. DOWD: Is there something in particular  
21 you wanted to direct our attention to, or do you want  
22 to us read the whole thing?

1 MR. O'CALLAGHAN: I am going to ask  
2 specific questions.

3 MR. DOWD: I am sure you will, but is there  
4 something in this document --

5 MR. O'CALLAGHAN: I misspoke. Excuse me.  
6 A general question regarding the document.

7 THE WITNESS: Okay.

8 BY MR. O'CALLAGHAN:

9 Q Have you ever seen this document before?

10 A Never.

11 Q Have you ever been shown a document, a  
12 draft -- a draft form of the IG's report?

13 A No.

14 Q You were -- let me withdraw that.

15 Have you ever learned when any office of  
16 the Office of the General Counsel received draft  
17 copies of the Treasury OIG report?

18 A No.

19 Q Did you have any conversation with anybody  
20 regarding that subject?

21 A No.

22 Q Do you know if there is a group of people



1 at Treasury who reviewed the IG draft reports, made  
2 suggestions to it?

3 A I don't know how that report was done.

4 Q I would like to show you a document, four  
5 pages, Bates stamp 02479 through 02482. I am  
6 directing your attention to the front page of it, the  
7 first page, which is a fax cover sheet, appears to  
8 be, with the date line July 25, 1994, Treasury  
9 Department, special agent, on the front of the  
10 document, and says "Department of Treasury, Office of  
11 Inspector General." And --

12 MR. PORTNOY: Can we go off the record for  
13 a second?

14 (Discussion off the record.)

15 BY MR. O'CALLAGHAN:

16 Q I would like to show you a document --  
17 before that, did you have any role with regard to  
18 responding to what the results of the OGE report was  
19 going to be?

20 A We didn't know what the result was going to  
21 be.

22 Q Did you play a role in trying to anticipate

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1 what the result would be and what the Department's  
2 public reaction would be to the report?

3 A We discussed what the possible results  
4 would be in terms of findings of wrongdoing, and that  
5 the Secretary would have to respond very quickly.  
6 And he wanted to be sure that people whose advice he  
7 respected were available to him to discuss it.

8 Q During the course of the investigation that  
9 was conducted by the IG's office, did you have any  
10 conversations with Mr. Schmalzbach with regard to any  
11 preparation he was doing for testimony for the  
12 Secretary?

13 A When we prepared for testimony, Ken was  
14 part of that team, so I assume I had discussions with  
15 him about the preparation.

16 Q How many times or how often did you have  
17 contact with Mr. Schmalzbach during July of 1994?

18 A Again, is this about depositions and  
19 transcripts, or is this about preparing Lloyd Bentsen  
20 to testify?

21 Q The question is just overall, how often did  
22 you have contact with Mr. Schmalzbach in July of

1 1994?

2 MR. DOWD: If you know.

3 THE WITNESS: I don't know. Maybe --

4 MR. DOWD: No "maybe," don't guess.

5 THE WITNESS: I don't know.

6 BY MR. O'CALLAGHAN:

7 Q I will ask you to approximate.

8 MR. DOWD: Either you know or you don't  
9 know.

10 THE WITNESS: I don't know.

11 BY MR. O'CALLAGHAN:

12 Q Do you know if it was at least once a week?

13 A Well, the first week of July, I don't think  
14 I was in the country. After that, it was probably at  
15 least once a week.

16 Q Was it more than once a week?

17 A Could have been. I just don't know.

18 Q Did you have daily contact with him?

19 A It's possible. I don't think so. Not  
20 daily.

21 Q Were you working on any of the same matters  
22 together?

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1 A Ken was in charge of our ethics operation,  
2 the ethics office, and I had plenty of occasions to  
3 deal with them.

4 MR. DOWD: Then the answer is yes.

5 THE WITNESS: Yes.

6 BY MR. O'CALLAGHAN:

7 Q Did he have any role in -- other than just  
8 general ethics issues, did he have any specific  
9 duties that were connected with work that you were  
10 doing during July of 199 had?

11 A I just -- I can't recall.

12 Q You --

13 MR. DOWD: We know they briefed the  
14 Secretary, so we've got one.

15 BY MR. O'CALLAGHAN:

16 Q You were coordinating document production  
17 with regard to all the different requests that were  
18 being made to the Treasury at this time; is that  
19 right? If that is not right, correct me.

20 A I was working with the general counsel's  
21 office, who was making the production, to insure that  
22 we were being fully responsive to all the various

1 parties.

2 MR. DOWD: What's your point? What are you  
3 driving at?

4 MR. O'CALLAGHAN: I am just trying to  
5 get --

6 BY MR. O'CALLAGHAN:

7 Q Did you have any contact with  
8 Mr. Schmalzbach in connection with those duties?

9 A Ken's office was in charge of collecting  
10 and producing the documents. So.

11 MR. DOWD: Yes?

12 THE WITNESS: If a new request came in,  
13 yes.

14 BY MR. O'CALLAGHAN:

15 Q How much of your time during this time  
16 period was spent dealing with the various document  
17 requests?

18 A I can't -- I can't speculate. I had other  
19 duties at the time.

20 Q Was it 50 percent?

21 A No, no. It wasn't that much. As we came  
22 up to the hearing, it became much, much more. And

1 the week before the hearing, we spent a lot of time.

2 Q How much time would you say the week before  
3 the hearing, what percentage of your time was spent?

4 A Maybe half.

5 Q Could it have been more?

6 MR. DOWD: What difference does it make?  
7 What difference does it make? Where are we going  
8 here? Come on, let's get to the point.

9 THE WITNESS: It might. It might not have  
10 been. It might have been less.

11 MR. DOWD: Suppose it is 60 percent? So  
12 what? What difference does it make to where you are  
13 going? You are talking about the OGE report and the  
14 depositions, whether they were improperly released to  
15 the White House. What matter does it make whether  
16 Mr. Knight spent 60 percent of his time preparing for  
17 the Congressional hearing?

18 MR. O'CALLAGHAN: If you allow me to  
19 continue my line of inquiry, and maybe elicit later,  
20 I will not give you my deliberations on --

21 MR. DOWD: I am not asking for your  
22 deliberations. Where are you going? What does this

1 have to do with anything? It is like running around  
2 the barn. Let's go through the door and get to the  
3 point; otherwise it is irrelevant. I mean I can't  
4 connect it up with what the object of this  
5 examination is, that's my problem, and that's why I  
6 am squawking.

7 MR. O'CALLAGHAN: Duly noted.

8 BY MR. O'CALLAGHAN:

9 Q Did Mr. Schmalzbach ever tell you that  
10 there is a group that reviewed -- let me withdraw  
11 that question.

12 Were you ever aware of a group that was  
13 designated to assist the IG in -- a group out of the  
14 Office of General Counsel that was designated to make  
15 revisions to the IG report before it was final?

16 A Absolutely not.

17 Q Are you aware when the IG deposition  
18 transcripts were first delivered to counsel for  
19 Treasury witnesses?

20 A Which were delivered? The IG depositions,  
21 Treasury witnesses?

22 Q Right.

1 A I think there was an answer to that  
2 question given to the Senate, Senator Bond asked a  
3 question to that effect, and I think they were given  
4 after the Senate was through with its depositions,  
5 after the all the depositions were final.

6 MR. DOWD: Do you know that independent of  
7 that?

8 THE WITNESS: No.

9 MR. DOWD: So the answer is no.

10 THE WITNESS: No, I don't.

11 MR. DOWD: Just stick to your knowledge.

12 BY MR. O'CALLAGHAN:

13 Q I would like to show you a document, Bates  
14 stamped 011735 and 36. Let me know when you have had  
15 a chance to review it. I am going to direct your  
16 attention to the last paragraph on the second page.  
17 And it is going to be the second to last sentence,  
18 beginning at that point. For the record, it is a  
19 two-page document.

20 MR. DOWD: Hang on a second. Let's read  
21 this document. I want to read this. I have never  
22 seen this document.

1 MR. O'CALLAGHAN: Why don't we go off the  
2 record, please.

3 (Discussion off the record.)

4 MR. O'CALLAGHAN: Back on the record.

5 MR. DOWD: By the way, I might state there  
6 is a reference here to access to White House  
7 documents, that access began on July 6. That may be  
8 the phone calls that we saw. We don't know. We are  
9 not sure, but a sort of half light may have went on  
10 in his head that may be the reason for phone calls.

11 MR. O'CALLAGHAN: It was a meeting we  
12 looked at, July 6.

13 MR. DOWD: After that there were phone  
14 calls. He didn't recollect any phone calls.

15 THE WITNESS: What I am saying, the  
16 question of whether I had conversations with Cutler  
17 on that day, I don't recall that. But the access  
18 could have been arranged on July 6 by those other  
19 than Mr. Cutler. And I think that may have been the  
20 reference.

21 MR. O'CALLAGHAN: Okay. The reference that  
22 was made earlier was to an entry in Mr. Cutler's

1 calendar, to a July 6 meeting, 11:30, and I --

2 MR. DOWD: He thinks he showed him  
3 sensitive documents.

4 THE WITNESS: But I think there may have  
5 been other meetings going on with attorneys, with his  
6 office and Office of General Counsel, perhaps, that I  
7 wasn't party to.

8 BY MR. O'CALLAGHAN:

9 Q That didn't involve you?

10 A No.

11 Q On the second page, in the third paragraph,  
12 this document states "statement of access to  
13 depositions by White House counsel," on the first  
14 page; then the second page is "statement on access to  
15 IG transcripts by witnesses."

16 I just asked you if you knew when  
17 transcripts were given to counsel for the Treasury  
18 witnesses, and the second to last sentence in the  
19 last paragraph reads that "the point commencing on  
20 July 25 we gave counsel for each of the Treasury  
21 witnesses copies of all transcripts of depositions of  
22 witnesses other than those working at the RTC."



1 Just the question is, after looking at  
2 that, does that refresh your recollection as to when  
3 witnesses -- counsel for witnesses were first given  
4 transcripts?

5 A I was not involved in this transaction.

6 MR. DOWD: So it doesn't refresh your  
7 recollection?

8 THE WITNESS: I have no knowledge of this.

9 MR. DOWD: Okay.

10 BY MR. O'CALLAGHAN:

11 Q Who was involved in that --

12 A I don't know.

13 Q -- process? Do you have knowledge?

14 A No.

15 Q The question -- the document I just showed  
16 you, 011735 through 36, had you seen this before?

17 A I had not.

18 Q Let's show you a document that bears the  
19 Bates 14954 through 14957.

20 MR. DOWD: Fire away.

21 BY MR. O'CALLAGHAN:

22 Q Have you seen this document before?

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1 A I don't recall seeing this at all.

2 Q Do you recall receiving any materials with  
3 regard to the Inspector General's report on July  
4 1994, before the Secretary got --

5 A I don't recall seeing it. I don't recall  
6 it at all.

7 Q In general, did you receive any materials  
8 on the subject of the Inspector General's report and  
9 investigation in July of 1994?

10 A No. Well, July of 1994, we received a  
11 final report.

12 Q Did you receive any internal documents?

13 A I mean it is possible, but, no, no internal  
14 documents.

15 Q Okay.

16 MR. DOWD: Internal to whom? What does  
17 that mean?

18 THE WITNESS: It says here that the  
19 Inspector General delivered a draft of his report. I  
20 think in my previous testimony I indicated that the  
21 normal procedure for the Inspector General was to  
22 prepare a draft and deliver that to the Secretary,

1 and then a final. I mean it is possible that this is  
2 correct, but I don't recall seeing it.

3 BY MR. O'CALLAGHAN:

4 Q You don't recall receiving a draft report  
5 from the Inspector General on July 22?

6 A I don't.

7 Q Do you recall receiving a draft before -- a  
8 draft of the IG's report before it was delivered to  
9 the office of the general ethics? Government ethics,  
10 excuse me.

11 A I don't. I don't recall that.

12 Q Did you receive more than one draft version  
13 of the draft report from the Inspector General's  
14 Office in July of 1994?

15 A I recall the final report. I don't recall  
16 a draft.

17 Q You didn't receive any other reports?

18 A I mean it is possible. I can tell you  
19 this: I didn't receive anything that wasn't  
20 delivered by the Inspector General for the  
21 Secretary.

22 Q But the question isn't who delivered it.

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1 The question is whether you received more than one  
2 draft report in July.

3 A No. More than one draft report in July,  
4 no.

5 Q Did you receive a final report from the IG  
6 in July?

7 A Yes, I think the final report came out  
8 right at the end of July.

9 Q When did you receive the draft report in  
10 relation to the final report?

11 A I don't recall receiving the draft report.  
12 It is possible and I just don't remember that.

13 Q Do you generally receive documents sent to  
14 the Secretary's attention before he receives it?

15 A Yes. But also, any document for him is  
16 logged in, given a number, and put in our records.  
17 This does not have that.

18 Q Let's take you back to the period July 23  
19 and the transmittal of the transcripts to the White  
20 House, and also the time period when we discussed  
21 some conversations you had with regard to releasing  
22 the transcripts to the White House.

1 During any conversations you had during  
2 this specific time period regarding the release of  
3 the transcripts to the White House, did you have any  
4 discussions with anyone at the Resolution Trust  
5 Corporation?

6 A No.

7 Q Were they consulted with regard to the  
8 decision of releasing the transcripts to the White  
9 House?

10 A I don't know.

11 Q Did you have any discussions with anyone  
12 where someone related to you that the RTC had been  
13 included in discussions with regard to release of the  
14 transcripts?

15 A Subsequently; not at the time.

16 Q Not before the transcripts were released?

17 A I don't recall having a conversation with  
18 anyone about that specific point --

19 Q So was --

20 A -- other than general, they were not legal  
21 issues or problems associated with the release of  
22 these transcripts. To a degree, that meant the RTC

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1 had signed off.

2 Q Did anyone raise the issue of contacting  
3 the RTC in any discussions that you had?

4 A No. I don't recall that.

5 Q So it wasn't under consideration or wasn't  
6 discussed?

7 A I just don't recall.

8 Q Did you have any discussions with the  
9 Secretary with regard to the release of transcript  
10 during that time period?

11 A Just on July 22 or 23.

12 Q What was the substance of those  
13 discussions?

14 A Just very brief conversations that the  
15 acting Inspector General has asked your opinion as to  
16 whether we should cooperate with the White House and  
17 share these transcripts, wants to know what your  
18 opinion is, and he said I think we should.

19 Q Have you previously had any conversations  
20 with the Secretary with regard to releasing  
21 transcripts to the White House?

22 A Never.

1 Q During your conversations regarding  
2 releasing the transcripts to the White House with  
3 anyone, was a concern ever raised about the  
4 transcripts being used to help improperly prep White  
5 House witnesses for Congressional testimony?

6 A The way it was expressed was we would  
7 insure that, through a written agreement with the  
8 White House counsel, that they would only be used for  
9 Lloyd Cutler's preparation for his testimony, and not  
10 by anyone else.

11 Q Was that agreement memorialized in the July  
12 23 letter I showed to you earlier? I can show it to  
13 you.

14 A Yes, the Steve McHale letter.

15 Q Who participated in drafting the terms of  
16 that agreement?

17 A I don't know.

18 Q Did you have any involvement?

19 A Not in the wording of it. I was probably  
20 told that there would be a protective letter to limit  
21 its use, because the understanding was it was for  
22 Lloyd Cutler's use for the hearings. And that is the

1 practice we had with regard to the documents earlier  
2 shared.

3 Q Have you ever learned that the transcripts  
4 were used for any purpose that violated the  
5 agreement, the written agreement contained in the  
6 July 23 letter?

7 A Say it again.

8 Q Probably wasn't very well worded.

9 A I'm sorry.

10 Q Have you ever become aware, have you  
11 learned that transcripts were used in a fashion that  
12 violated the attorneys' agreement in the July 23  
13 letter?

14 A I at least have read newspaper reports that  
15 seem inconsistent with that understanding. We  
16 haven't done fact-finding.

17 Q And when you say "inconsistent," what  
18 specifically do you mean?

19 A Well, the articles, as I recall, raised a  
20 question as to whether or not they might have been  
21 used with particular witnesses.

22 Q And within your understanding, if the

1 actual physical transcripts weren't shown to  
2 witnesses -- this is going to be a long question.  
3 Let me start again.

4 If the actual transcripts weren't shown to  
5 prospective witnesses, but the content was used to  
6 inform these witnesses that there was testimony that  
7 was contrary to the testimony that they'd given,  
8 would that have constituted a violation of the  
9 agreement?

10 MR. PORTNOY: I am going to object before  
11 the witness answers because I think you need to  
12 provide context and explain the purpose for which the  
13 material was used, rather than just to state that the  
14 material was used and ask broadly whether under all  
15 circumstances that would be violative of the  
16 agreement.

17 MR. O'CALLAGHAN: I think I said -- off the  
18 record.

19 THE WITNESS: Can I take a moment.

20 MR. O'CALLAGHAN: Off the record.

21 (Discussion off the record.)

22 BY MR. O'CALLAGHAN:

1 Q During the conversation that you had with  
2 the Secretary with regard to releasing the  
3 transcripts to the White House, was there any  
4 discussion with regard to any agreement that the  
5 Secretary had with Mr. Cutler with regard to the  
6 transcripts?

7 A No, the discussion was just purely as to  
8 his opinion on the issue. It wasn't on legal  
9 issues.

10 MR. DOWD: Was there any reference to a  
11 discussion by the Secretary --

12 THE WITNESS: I think subsequently we did  
13 discuss the protective letter, and I think in fact  
14 the Secretary's testimony before the committee a few  
15 days later described that.

16 MR. DOWD: But not in this discussion.

17 THE WITNESS: Not in that discussion. I  
18 was in Texas. I was going through a list of items  
19 that I had to get his input, decision.

20 BY MR. O'CALLAGHAN:

21 Q And the subsequent discussion, what was the  
22 substance of those discussions with regard to the



1 agreement?

2 A It was, you know, something along the lines  
3 that we had -- the IG had decided to share those  
4 depositions and we had done it pursuant to protective  
5 letter, similar to the ones that we had previously  
6 with the White House on documents.

7 Q Had the Secretary had any input in the  
8 terms of the agreement that were in the July 23  
9 letter?

10 A No.

11 Q Did the Secretary have any specific  
12 discussions with Mr. Cutler with regard to providing  
13 transcripts at any time?

14 A Not on transcripts, but initially, with  
15 regard to the whole relationship between Treasury and  
16 the White House, as Mr. Cutler did his investigation,  
17 he put some limits on it, along the lines of the ones  
18 we put in writing on transcripts. But he indicated  
19 that we had to consult with lawyers and there were  
20 going to be conditions to our relationship.

21 Q Were the terms of this conversation or  
22 limits and conditions ever memorialized in writing

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1 between the two?

2 A In the Joel Klein letter, and the Steve  
3 McHale letters.

4 Q Have you ever learned that the Secretary  
5 had a specific conversation with Mr. Cutler with  
6 regard to the provision of the transcripts?

7 A I have not.

8 Q Have you ever been told he had a specific  
9 conversation with Mr. Cutler with regard to  
10 transcripts?

11 A I haven't been told, no, not by him.

12 Q Were you told by anyone?

13 A No.

14 MR. DOWD: Repeat that question.

15 (The reporter read the record as requested.)

16 MR. DOWD: Implicit in that is that someone  
17 may have said it to you when you said not by him. Do  
18 you want to --

19 THE WITNESS: No one has told me, who would  
20 have knowledge of it, that there was such a  
21 conversation.

22 BY MR. O'CALLAGHAN:

1 Q The question is just generally anyone, in  
2 the open universe, whether or not you believe they  
3 have knowledge of it or not.

4 A I am thinking.

5 It's possible that someone in the general  
6 counsel's office might have speculated that there's  
7 been a conversation.

8 Q And who in the general counsel's office?

9 A I don't know.

10 Q Do you know what the source of this --

11 A Someone who was dealing with the White  
12 House counsel's office.

13 Q Who was that at that time who were dealing  
14 with the White House counsel's office?

15 A I really don't know. I assume it was Ken  
16 Schmalzbach and Steve McHale primarily, and perhaps  
17 Bob McNamara.

18 Q Was this brought up in any conversations  
19 you had with them --

20 A Not that I recall.

21 Q Let me just finish -- during discussions  
22 you had about releasing the transcripts?

1 A No. Lloyd Cutler -- no. No.

2 Q With regard to any agreements between the  
3 White House and Treasury with regard to transcripts,  
4 releasing transcripts?

5 A Could you restate that? I'm sorry.

6 Q Sure. Let me just ask a more general  
7 question, and then we will work our way down the  
8 line.

9 Whether you have heard that there was a --  
10 any kind of agreement between the White House and  
11 Treasury before the July 23 letter with regard to  
12 releasing the transcript to the White House?

13 A No, no, absolutely not. I am not aware of  
14 any.

15 Q Was anyone else in your office involved in  
16 conversations with regard to releasing the  
17 transcripts on July 23 or in and around that time  
18 period?

19 A In my office, no.

20 Q Are you aware that unredacted copies of  
21 transcripts were released to anyone other than the  
22 White House before July 23 by the Department of

1 Treasury?

2 A No.

3 Q Have you heard that or -- excuse me -- let  
4 me start again.

5 Were transcripts released by Treasury or  
6 Resolution Trust Corporation to the White House  
7 before July 23, 1994?

8 A I am not aware of that.

9 Q Did the IG release transcripts to the White  
10 House before July 23, 1994?

11 A I am not aware of that.

12 Q I believe I left outstanding a question I  
13 asked right before we took the break. And I will  
14 attempt to -- hopefully I can rephrase it. Just  
15 answer the question I ask you now, just so the record  
16 is clear.

17 We were discussing the terms of the  
18 restrictions placed on the use of the transcripts  
19 that were contained in the July 23 letter, and I had  
20 asked you if you had heard whether the transcripts  
21 had been used in a way that was violative -- violated  
22 the terms of those conditions.

1 And then I asked you whether, if the  
2 information contained in the transcripts was used to  
3 tell White House witnesses who were preparing for  
4 testimony.

5 MR. PORTNOY: For their own testimony.

6 MR. O'CALLAGHAN: Correct. Could you read  
7 back what I just said, please.

8 (The reporter read the record as requested.)

9 MR. O'CALLAGHAN: All right. I'm sorry. I  
10 want to make sure the question is clear. And if you  
11 would like to clarify at the end of the question, I  
12 would appreciate it, instead of interrupting me.

13 BY MR. O'CALLAGHAN:

14 Q The question is if the information that was  
15 contained in the transcripts was used to notify White  
16 House officials who were preparing to testify that  
17 there was testimony that contradicted the testimony  
18 they'd given, whether that use would have been  
19 violative of the terms of the agreement in the July  
20 23 letter?

21 MR. PORTNOY: I object. Would it be a fair  
22 restatement of your question to ask Mr. Knight

1 whether in his view it would be violative of the  
2 agreement if the deposition transcripts were used to  
3 prepare witnesses other than Mr. Cutler?

4 MR. O'CALLAGHAN: No, that's not the  
5 question.

6 MR. DOWD: It is not really fair to load up  
7 a question like that. Why don't you ask the witness  
8 what the basis of his knowledge is. Implicit in your  
9 question was that he was sitting there while Cutler  
10 was reading the depositions to the witnesses. He  
11 wasn't there. All he can tell is what the AP report  
12 said. How the hell does he know what Cutler did?

13 MR. O'CALLAGHAN: I am asking Mr. Knight  
14 for the -- for his understanding of the agreement as  
15 it would apply to that set of facts.

16 MR. PORTNOY: I am going to object  
17 generally that you are asking the witness to  
18 speculate about a hypothetical situation without any  
19 foundation and without adequate factual predicate.  
20 And, in the absence of an adequate factual predicate,  
21 I am concerned that Mr. Knight's response could be  
22 easily misconstrued, and as a consequence I am going

1 to object generally to this hypothetical question.

2 MR. O'CALLAGHAN: I am going to ask you to  
3 answer it anyway, to the best that you can.

4 MR. DOWD: Can I put the question a little  
5 differently to him and then you can go to your  
6 question if you want? Can I lay a bit of a predicate  
7 here?

8 How do you know -- what's the basis of your  
9 knowledge that deposition transcripts were read to  
10 White House witnesses?

11 THE WITNESS: My only knowledge on that is  
12 the AP stories that came out earlier this year.

13 MR. DOWD: And what, to your recollection,  
14 did that story say?

15 THE WITNESS: It indicated that Mr. Cutler  
16 had stated that he had used the depositions to  
17 challenge the witnesses as he prepared for his  
18 testimony.

19 MR. DOWD: All right, and was that  
20 consistent with your agreement, the agreement between  
21 Treasury and the White House?

22 MR. PORTNOY: Mr. Dowd, I don't want to

1 make this --

2 MR. O'CALLAGHAN: You got to stop  
3 interrupting.

4 MR. PORTNOY: No, I don't. I am entitled  
5 to object any time I think there is a potential  
6 problem with the testimony. And Mr. Knight has  
7 testified that he has no personal knowledge of these  
8 facts and that he has sketchy knowledge based upon a  
9 report in the press. And I am concerned that he is  
10 being asked to answer questions where all the facts  
11 aren't known, and as a consequence, his answer may  
12 well change in the face of a different hypothetical.

13 MR. DOWD: I am not dealing with the  
14 hypothetical. I am dealing only with the knowledge  
15 Mr. Knight has. I am simply laying a little bit of a  
16 predicate so Mike can go ahead with his question. I  
17 think it is helpful to add I am not trying to scoop  
18 you.

19 MR. O'CALLAGHAN: I appreciate the  
20 assistance.

21 MR. DOWD: I want to know, based upon the  
22 reading of that article, assume the article is true

1 for the purpose of the question, is that a consistent  
2 use of the deposition transcripts, consistent with  
3 the agreement that Treasury had with the White  
4 House?

5 THE WITNESS: It seems inconsistent with  
6 the spirit of the agreement. But I can't say that  
7 there is enough facts in those articles for me to  
8 reach a firm conclusion.

9 MR. O'CALLAGHAN: That's fine. That's all  
10 we were looking for.

11 MR. DOWD: Just wanted to lay a little  
12 foundation.

13 BY MR. O'CALLAGHAN:

14 Q I wanted your opinion on the terms of the  
15 agreement and those facts as related. I would like  
16 you to take a look at 06097 and 06098. Show it to  
17 counsel as well and let me know when you are finished  
18 viewing it. Your attention should be drawn to the  
19 second page. The first page is the fax cover sheet.

20 MR. DOWD: Go ahead.

21 BY MR. O'CALLAGHAN:

22 Q Do you recognize this document?



1 A Yes.

2 Q I am referring specifically to the second  
3 page of the document. I will identify a portion of  
4 it. It's a memo on Department of Treasury  
5 letterhead, dated July 27, 1994. It is for Robert P.  
6 Cesca. It is from Edward S. Knight, and then there  
7 is a signature next to the Edward S. Knight. Is that  
8 your handwriting?

9 A It is.

10 Q And did you write this memorandum?

11 A Yes.

12 Q I would like to direct your attention --  
13 excuse me, the subject is "Congressional staff  
14 request for witness interview transcripts." And I  
15 would like to direct your attention to the second  
16 sentence which reads "because your inquiry is  
17 intended to support the Office of Government Ethics  
18 in responding to the Secretary's request for its  
19 opinion, your inquiry cannot not be considered  
20 complete until the Office of Government Ethics has  
21 advised you that it has all of the information  
22 necessary to issue its opinion. Accordingly, the

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1 Secretary has asked me to inform you that he believes  
2 that none of the transcripts of witness interviews  
3 conducted in the course of your investigation should  
4 be released outside of the executive branch, until  
5 your report is finalized and the Office of Government  
6 Ethics has provided the Secretary with an opinion."

7 Before -- was this your understanding with  
8 regard -- let me withdraw that.

9 Before the transcripts were released on  
10 July 23, were similar concerns raised with regard to  
11 whether or not the IG's investigation or inquiry was  
12 complete before the transcripts were given to the  
13 White House?

14 A I believe it's possible, that -- can you  
15 read back the question again.

16 (The reporter read the record as requested.)

17 THE WITNESS: Yes. The transcripts would  
18 not be released until they were final.

19 BY MR. O'CALLAGHAN:

20 Q I'm sorry, the transcripts?

21 A The transcripts would not be released to  
22 the White House until they were final.

1 Q I'm sorry. Until what were final?

2 A Until the transcripts were final. And I  
3 believe the Senate depositions were over, and each of  
4 the individuals, I believe, had been given an  
5 opportunity to review their transcripts. And so  
6 therefore, the transcripts that were shared with the  
7 White House were final at that point.

8 MR. DOWD: In other words, signed by the  
9 witness with an errata sheet --

10 THE WITNESS: Right.

11 MR. DOWD: -- that's what you mean by  
12 final?

13 THE WITNESS: Right.

14 MR. DOWD: Okay.

15 BY MR. O'CALLAGHAN:

16 Q Were the same transcripts provided to  
17 Congressional staff in late July 1994?

18 A The same transcripts were supplied, I  
19 believe -- I don't know when they were released to  
20 Congress, frankly. I believe there is a cover letter  
21 that accompanies this, to the Secretary, explaining  
22 that the acting IG asked for this memo from the

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1 Secretary in order to maintain the integrity of his  
2 investigation, and to follow the same procedures  
3 that, in essence, Robert Fiske had followed with his  
4 investigation.

5 So in terms of procedures here, this was  
6 the same procedures that everyone was following with  
7 regard to transcripts. This was not a memo that we  
8 initiated to the IG's office. They requested it.

9 Q I guess the basic question is, were the  
10 same procedures used with regard to the White  
11 House -- the transcripts that were delivered to the  
12 White House on July 23?

13 A In terms of what -- what do you mean by the  
14 procedures here?

15 Q Well, here --

16 MR. DOWD: You mean the report from the  
17 OGE?

18 MR. O'CALLAGHAN: Here, it --

19 THE WITNESS: It says clearly this is  
20 outside of the executive branch, that the Secretary's  
21 expressing his opinion. It is not expressing an  
22 opinion with regard to processes within the executive

1 branch.

2 BY MR. O'CALLAGHAN:

3 Q Was there a reason why there was a  
4 distinction made between releasing the transcripts to  
5 the executive branch and releasing the transcripts  
6 outside the executive branch?

7 A Not meaning to be disrespectful, but I  
8 think the Constitution of the United States.

9 Q But was there a consideration given to the  
10 fact that the witness -- that the transcripts were  
11 being -- let me withdraw that.

12 Do you know or have you learned whether any  
13 Congressional witnesses altered their testimony as a  
14 result of being able to review unredacted copies of  
15 the transcripts?

16 A No, absolutely not.

17 Q You have no knowledge?

18 A None.

19 Q Did you ever approach Secretary Bentsen and  
20 ask him if he had had conversations with Mr. Cutler  
21 about the release of the transcripts?

22 A I have not asked him that.

1 Q Have you ever been asked to ask Secretary  
2 Bentsen whether he had conversations with Mr. Cutler  
3 with regard to releasing the transcripts?

4 A No.

5 Q I would like to show you a document Bates  
6 stamped 11155, a one-page document.

7 Document 11155 appears to be an E-mail or  
8 communication from Stephen McHale to Foreman, D. The  
9 date is 10/4/94. The subject is "question for Ed."  
10 And have you ever seen this document before?

11 A I have not.

12 Q There was a reference in this  
13 communication, I think -- let me read the whole  
14 sentence. It reads "I know that Ed checked with the  
15 Secretary on this and the Secretary testified that he  
16 thought it was the right thing to do. But I do not  
17 know if Cutler and the Secretary ever spoke about the  
18 transcript. I think Ed raised the issue with the  
19 Secretary on his own."

20 Does that help refresh your recollection?

21 A I have no recollection of raising it with  
22 the Secretary.

1 Q Would you have been approached by  
2 Mr. McHale and Mr. Foreman about whether you  
3 approached the Secretary?

4 A They may have asked me whether I had but I  
5 know I never did.

6 Q Is there a particular reason why you know  
7 you never did?

8 A I didn't really think it was relevant at  
9 the time.

10 Q Why didn't you think it was relevant?

11 A I didn't think it was a significant  
12 question at the time. There was no need, as I saw  
13 it.

14 Q I would like to show you a document, Bates  
15 stamped 1 -- excuse me, 0118803, some handwritten  
16 notes. The copy's somewhat tough to discern. Have  
17 you ever seen this document before?

18 A I might have. In the context of  
19 attorney-client.

20 Q Okay. The document at the top appears to  
21 say "Steve." Then it says -- it was identified by  
22 someone who is familiar with the document, who

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1 received it earlier, as saying that -- and it says  
2 "Ed says to go ahead and permit the White House to  
3 send their Q&As to the Hill."

4 Do you know what that refers to?

5 A I am not certain. It is possible that they  
6 were questions the White House was getting on this  
7 subject that someone might have gotten a copy of.

8 Q And it says "Ed to go ahead and permit the  
9 White House to send the Q&As"?

10 A We would not, and we took the approach that  
11 we would not in any way comment on their comments in  
12 this subject area. And I did not want us getting  
13 involved in their answers to this question so that  
14 reflects that.

15 Q I have one more question about the  
16 document. It says "Ed has decided not to raise the  
17 Secretary's anxiety level about the Cutler call. So  
18 no more hold." Do you know what that reference to?

19 A With regard to the hold, I would say that  
20 was -- we were not going to comment on anything the  
21 White House was doing here. And again, with regard  
22 to the Cutler call, I would not -- I had a practice

1 of not going in and talking to the Secretary about  
2 his recollections in this area.

3 Q Is there a particular reason?

4 A Those were his recollections and I wasn't  
5 going to get into the business of tampering with his  
6 recollection one way or the other. That was for  
7 someone else to do.

8 Q Were you familiar with any particular  
9 anxiety level --

10 A No. I think that anxiety level, I don't  
11 know where that came from.

12 Q That wasn't a statement that you made to  
13 Mr. Foreman --

14 A No, absolutely not.

15 MR. DOWD: It was hyperbole, that's all.

16 BY MR. O'CALLAGHAN:

17 Q Are you aware that the Secretary  
18 experienced any anxiety about inquiries about  
19 conversations he might have had with Mr. Cutler --

20 A No, I am aware of none. As I said earlier,  
21 I never discussed the issue with him.

22 MR. O'CALLAGHAN: Let's go off the record

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1 for two minutes.

2 (Discussion off the record.)

3 MR. O'CALLAGHAN: Let's go back on the  
4 record. At this moment I have no further questions.

5 THE WITNESS: Thank you.

6 MR. O'CALLAGHAN: Thank you.

7 EXAMINATION

8 BY MR. PORTNOY:

9 Q Good afternoon, Mr. Knight.

10 A Good afternoon.

11 Q My name is Jim Portnoy. I am counsel for  
12 the Democratic Senators on the special committee and  
13 I have a few follow-up questions.

14 You testified earlier that you spoke with  
15 Secretary Bentsen about the prospect of seeking some  
16 kind of analysis or investigation of the allegations  
17 of White House-Treasury contacts?

18 A Yes.

19 Q Could you explain a little further what  
20 Secretary Bentsen's concerns were at this time?

21 A We had read in the Post that there was  
22 concern about these contacts. They were calling into



1 question the integrity of senior officials and the  
2 Department generally. He wanted to take quick action  
3 and go to an independent party that had expertise in  
4 these matters. So, acting on his own, without  
5 consultation with the White House, he decided to turn  
6 to the Office of Government Ethics to do the analysis  
7 for us.

8 Q Do you recall who thought to ask the Office  
9 of Government Ethics?

10 A We went to the Office of the General  
11 Counsel and to the ethics officials, which again I  
12 want to emphasize, the reason you see attorneys in  
13 the general counsel's office involved, from my  
14 perspective, was they were the ethics officials of  
15 the Department, and ethical questions had been  
16 raised. And the desire on everyone's part was to be  
17 as careful as possible to avoid any further problems,  
18 and to consult with those individuals.

19 Q So --

20 A And those individuals indicated that the  
21 Office of Government Ethics was a logical place to  
22 turn with this sort of issue.

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1 Q Who did you consult in the general  
2 counsel's office?

3 A On that day, it was Dennis Foreman who was  
4 the agency ethics official, under the Ethics in  
5 Government Act, and the assistant general counsel,  
6 his title at the time did not make it clear that  
7 ethics was in his title but it is, that is the  
8 office.

9 Q Mr. Schmalzbach?

10 A Mr. Schmalzbach's office; it gives ethics  
11 advice to the whole Department.

12 Q So the initial suggestion to approach the  
13 Office of Government Ethics came from the general  
14 counsel's office?

15 A At least that option.

16 Q So it would be fair to say that the Office  
17 of General Counsel itself suggested that you seek an  
18 independent third party to review these events?

19 A Yes.

20 Q At the time, did Secretary Bentsen  
21 anticipate he might be asked to testify before  
22 Congress regarding the allegations of White

1 House-Treasury contacts?

2 A That was not a dominant issue. It was --  
3 he felt very strongly that the public expected  
4 answers to these questions, and that he needed to  
5 provide them as quickly as possible.

6 Q Did Secretary Bentsen have any concerns  
7 that he might have to take managerial action with  
8 respect to these contacts?

9 A He did. If the Office of Government Ethics  
10 had found violations of ethics laws or standards, he  
11 was prepared to take immediate action.

12 MR. O'CALLAGHAN: Off the record for a  
13 second.

14 (Discussion off the record.)

15 BY MR. PORTNOY:

16 Q The Secretary asked you to play some kind  
17 of coordinating role in connection with the  
18 investigation, or the multiplicity of investigations?

19 A The subpoena from the independent counsel  
20 had to be served on some individual. The Secretary  
21 was out of town. General counsel was involved, as  
22 was the deputy. It came to me. I had to make sure

1 that we responded fully to that subpoena. Then, a  
2 series of letters started coming in from members of  
3 Congress and committees. I as his executive  
4 secretary had to make sure those letters got answered  
5 and that we had responses to them.

6 And third, he had to have someone  
7 coordinate his testimony before Congress, to insure  
8 that he was adequately prepared, and I am proud to  
9 say I had that role.

10 Q All roads led to you?

11 A I don't know that I'd say that, but there  
12 were a number of aspects of this that I had to become  
13 involved in.

14 Q You indicated that there were, I believe,  
15 at least four inquiries, the independent counsel, the  
16 House Banking Committee, the Senate Banking  
17 Committee, and the White House?

18 A Well, the Office of Government Ethics,  
19 House, Senate, White House, and the IG, I mean they  
20 were -- the OGE and the IG were connected. But they  
21 all had letters, and we had to keep track of the  
22 requests, and there were numerous requests for

1 information from individual members, from the IG,  
2 they needed access to people, they all were written  
3 to the Secretary.

4 Q Did you have any instructions from  
5 Secretary Bentsen concerning the possibility of  
6 interference with the Inspector General's  
7 investigation?

8 A He made it absolutely clear that we should  
9 do all we could to cooperate, and to allow them to  
10 operate in their normal fashion. In my view, from my  
11 perspective, the whole tone of the approach we took  
12 here was set by the Secretary's independent action,  
13 asking for the investigation, and him allowing me  
14 within 24 hours of receiving the subpoena, which came  
15 the next day, to bring in the IRS investigators.

16 MR. O'CALLAGHAN: I'm sorry for  
17 interrupting. You asked him about the Inspector  
18 General, was the question. And I think you were  
19 addressing the independent counsel.

20 MR. DOWD: No, the question was  
21 instructions from the Secretary.

22 MR. O'CALLAGHAN: With regard to the

1 Inspector General's investigation is what it was.

2 THE WITNESS: He gave me general  
3 instructions with regard to handling these matters,  
4 and that was to insure that we had the most pristine  
5 process and that we bent over backwards to cooperate  
6 with everyone. And I think you will see statements  
7 in the record, in the House, from Chairman Leach,  
8 congratulating us and members of general counsel's  
9 office for their cooperation, and similar statements  
10 out of the Senate.

11 BY MR. PORTNOY:

12 Q You played no direct role in the  
13 investigation, did you, sir?

14 A No.

15 Q You never formulated any questions --

16 A No.

17 Q -- for witnesses?

18 A No. That's the opposite of what we wanted  
19 to do. I worked with the Secretary. The Secretary  
20 was not going to do an investigation. He was going  
21 to have someone outside the Department do an  
22 investigation.

1 Q During the course of the investigation, to  
2 your knowledge, did you ever speak with any of the  
3 investigators?

4 A No, never laid eyes on them.

5 Q So the only contact you had with the Office  
6 of Inspector General during the period of the  
7 investigation would have been with Mr. Cesca?

8 A Yes, I told Mr. Cesca at the beginning of  
9 the process, I called him and said you have my  
10 complete cooperation. If the Secretary can do  
11 anything to support you, if you need particular  
12 resources, if you need money, if you need more  
13 investigators, if you need Xerox machines, if you  
14 need secretaries, we will give it to you.

15 Q Did Mr. Cesca make any such request of your  
16 Department?

17 A No, the only requests he made were the ones  
18 I've already described.

19 Q You testified you first saw the Inspector  
20 General's report when it was delivered to the  
21 Secretary?

22 A My recollection of that, I just don't have

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1 a clear recollection of whether I saw the draft  
2 report after it was delivered, or just the final  
3 one. These were quite bulky documents. I was, as  
4 executive secretary, responsible for reading  
5 everything that came to the Secretary.

6 The Secretary testified before the Senate  
7 that, in the period in question, there were 80,000  
8 memos that came to him. I read each of those memos.  
9 Now, we could have received this, quote, my office  
10 could have received it and I may have never even  
11 touched it. I just don't have a clear recollection.

12 Q Would it be accurate to say that if a draft  
13 copy of the Inspector General's report was delivered  
14 to the Secretary on July 22, it would have come  
15 through your office?

16 A Oh, yes.

17 Q What if a report had been delivered to the  
18 Secretary prior to that, would it also come to your  
19 office?

20 A Yes. I mean there is a manual that  
21 establishes the process that gets stuff to the  
22 Secretary. And nothing gets to him, outside of that

1 office. It is given a number, and it is logged in,  
2 for just these purposes.

3 Q And you have no knowledge of the receipt by  
4 the Secretary of a copy of the -- specific knowledge  
5 of a copy of the draft report prior to July 22?

6 A No, no, no.

7 Q And you have no knowledge of the receipt by  
8 the Secretary of the Inspector General's  
9 depositions --

10 A No.

11 Q -- prior certainly to July 22?

12 A No. He would not have looked at  
13 depositions. It is just --

14 Q On the 23rd of July, the deposition  
15 transcripts were conveyed to the White House in some  
16 fashion; is that your understanding?

17 A That's my understanding.

18 Q And you were contacted, or at least spoken  
19 with, prior to the conveyance of those transcripts to  
20 the White House?

21 A I was asked to get the Secretary's opinion  
22 as to whether they should be shared.

1 Q Sir, you also were asked to get the  
2 Secretary's opinion about the sharing of transcripts  
3 later in the month, I believe on the 27th of July,  
4 this time whether the transcripts should be shared  
5 with Congress.

6 Is it possible that you are confusing those  
7 recollections?

8 A No. There were two different issues. One  
9 was the executive branch issue, the counsel to the  
10 chief law enforcement officer for the government  
11 having an investigation and wishing for his purposes  
12 of testifying before Congress to see transcripts that  
13 were already filed. And the other was Congress  
14 asking for those transcripts when the Inspector  
15 General had asked for the Secretary to advise him  
16 specifically that he shouldn't give it because it  
17 wouldn't be considered final at that point.

18 Q More specifically, sir, I am concerned  
19 about your testimony that Mr. Cesca called you, and  
20 requested that you consult with the Secretary to  
21 determine whether the Secretary had a view regarding  
22 the release of the transcripts.



1           Could your recollection about that event be  
2 confused?

3           A    If I said that, I did not mean it. The  
4 conversation I remember most clearly is, after  
5 speaking with the Secretary, conveying the  
6 Secretary's opinion. How I was told that the IG  
7 wanted the Secretary's opinion, I just don't know  
8 from whom that came. It may have come from Bob  
9 Cesca; it may have come from someone else, but  
10 someone who was reliable on this.

11          Q    So you are not certain that you actually  
12 spoke with Mr. Cesca on the 23rd of July?

13          A    No, I am not certain of when it occurred.  
14 I am fairly certain we had at least one conversation,  
15 that I conveyed to him the Secretary's views.

16          Q    And that conversation could have been in  
17 connection with the release of the depositions to  
18 Congress?

19          A    Might have been.

20          Q    You have no clear recollection?

21          A    I have a recollection of talking to  
22 Mr. Cesca once and I thought I was conveying the

1 Secretary's views.

2           MR. O'CALLAGHAN: Just for clarity of the  
3 record, you thought you were talking to him about the  
4 Secretary's views about release of the transcripts to  
5 the White House; correct?

6           THE WITNESS: Yes.

7           BY MR. PORTNOY:

8          Q    Sir, I would like to hand you a document  
9 which is Bates stamped numbers 156000102 and 03. It  
10 is a memorandum from you to Secretary Bentsen, and I  
11 would like you to tell me if this is the cover  
12 memorandum that you referred to before with respect  
13 to your memorandum to Mr. Cesca of the same date?

14          A    This --

15          Q    There are two memoranda.

16          A    Oh, there's two different --

17          MR. PORTNOY: Off the record.

18          (Discussion off the record.)

19          MR. PORTNOY: Back on the record.

20          BY MR. PORTNOY:

21          Q    Could this be a draft of the --

22          A    It could be a draft.

1 Q I show it to you only to refresh your  
2 recollection, sir.

3 A Right.

4 Q Does this draft memorandum refresh your  
5 recollection at all regarding when you might have  
6 spoken with Mr. Cesca --

7 A Yes.

8 Q -- in response to his request for the  
9 Secretary's views on release of the transcript?

10 A Yes. I mean it is possible. I just -- I  
11 can't -- I don't have a clear recollection.

12 MR. O'CALLAGHAN: I want to clarify, you  
13 keep trying to say there was one conversation  
14 regarding the release of transcripts with Cesca and I  
15 am not sure that was Mr. Knight's testimony. It is  
16 kind of misleading.

17 BY MR. PORTNOY:

18 Q Allow me to clear it up because I believe  
19 it was Mr. Knight's testimony.

20 Is it your recollection you had just one  
21 conversation with Mr. Cesca regarding the Secretary's  
22 views?

1 A I have one recollection, a fairly clear  
2 recollection that I had one conversation. It is  
3 possible I might have had another. And it is  
4 possible that it was --

5 MR. DOWD: You said you had one, about  
6 what?

7 THE WITNESS: I recall an exchange where  
8 Mr. Cesca indicated that he had received tremendous  
9 cooperation from the White House, and he felt it was  
10 appropriate to cooperate with them. Now, whether it  
11 was in the context of this July 27th memo or in the  
12 context of July 23rd depositions, I don't have a  
13 clear recollection.

14 MR. O'CALLAGHAN: Why don't you also  
15 identify for the record the memo -- what the memo you  
16 just showed him talks about. You pointed to the  
17 memo.

18 THE WITNESS: Yes, I think the July 27 memo  
19 is a cover to the memo you showed me earlier.

20 MR. DOWD: Draft memo to Cesca, is that  
21 what you are referring to?

22 BY MR. PORTNOY:

1 Q We don't need to get lost in the language  
2 of this memorandum. I was just trying to discern  
3 whether the reference to the cover memorandum, to the  
4 July 27 memorandum from to you Mr. Cesca, might  
5 refresh your recollection of when you spoke with  
6 Mr. Cesca. You have indicated that you still are not  
7 certain when precisely you spoke with him?

8 A No.

9 Q But that you have a clear recollection of  
10 one conversation and no clear recollection whether  
11 there were any others?

12 A Right.

13 MR. PORTNOY: That's all I have with  
14 respect to --

15 MR. DOWD: I don't see any reference to the  
16 conversation with Cesca.

17 THE WITNESS: No.

18 MR. DOWD: There is nothing in here about  
19 that. I don't understand. How could you refresh his  
20 recollection when it doesn't refer to it?

21 MR. PORTNOY: He may recall drafting the  
22 memorandum, he may recall the events around the

1 drafting of the memorandum and that may give rise to  
2 a refreshed recollection. He testified it didn't  
3 help him. It was the closest thing to a  
4 contemporaneous record that was produced, so it was  
5 the closest thing to a contemporaneous record that we  
6 could provide.

7 MR. O'CALLAGHAN: There seems to be some  
8 confusion -- and I am not trying to muck up the  
9 record; I am trying to clear it up a little bit.

10 Do you mind if I make a couple of quick  
11 clarifying statements, or do you want me to wait  
12 until my turn, just because at this point the record  
13 seems a little confused.

14 MR. DOWD: Do it. We are wasting time  
15 talking about it, just do it.

16 MR. PORTNOY: I would prefer to proceed,  
17 and allow you, if you would, to come back later.

18 BY MR. PORTNOY:

19 Q Secretary Bentsen, you testified, was in  
20 Texas?

21 MR. DOWD: Coming back later we will have  
22 to reconstruct it. You showed him a document. Let

1 him ask the question.

2 THE WITNESS: Is there some significance  
3 here that --

4 MR. DOWD: I haven't got the point yet.  
5 I'm sorry.

6 MR. O'CALLAGHAN: You testified that you  
7 recall having a -- you had a conversation with  
8 Mr. Cesca where he told you he had received  
9 tremendous cooperation, or cooperation from the White  
10 House; correct? And what was the rest of your  
11 recollection of the conversation?

12 THE WITNESS: That was it. I mean that I  
13 can recall.

14 MR. O'CALLAGHAN: With regard to the  
15 propriety of releasing transcripts, was the context.

16 THE WITNESS: Yes.

17 MR. O'CALLAGHAN: And the July 27 memo he  
18 showed you, does that have any reference to the  
19 releasing of the transcripts to the White House?

20 THE WITNESS: It doesn't.

21 MR. O'CALLAGHAN: That clarifies --

22 MR. PORTNOY: I am afraid that -- I am not

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1 going to go through this again.

2 MR. DOWD: Let's go. You can make your  
3 point and he can make his point.

4 BY MR. PORTNOY:

5 Q Let me make it as transparent as I can.

6 Mr. Cesca has testified that you telephoned  
7 him on the 23rd of July but did not actually speak  
8 with him. Do you have any reason to believe that  
9 Mr. Cesca's testimony is inaccurate?

10 A I can tell you that the transcripts would  
11 not have been released, I wouldn't have thought,  
12 unless they had gotten my feedback on it, but it is  
13 possible.

14 Q But did your feedback -- was your feedback  
15 necessarily directed to Mr. Cesca? Could you in fact  
16 have spoken to Mr. McHale or Mr. Schmalzbach instead?

17 A It's possible. It's possible.

18 MR. DOWD: Are you saying that he had  
19 called Cesca but Cesca didn't talk to him? You want  
20 to know whether Ed thinks that's right or not.

21 MR. PORTNOY: That's correct.

22 MR. DOWD: I wouldn't bother to answer it.

1 You don't know the context of what he testified. We  
 2 don't have that testimony before us. I instruct you  
 3 not to answer that. How can we take something out of  
 4 context? We don't know what was said, we don't know  
 5 the context, we have no transcript here. You've got  
 6 a transcript.

7 MR. PORTNOY: I am not quoting Mr. Cesca.

8 MR. DOWD: You said he testified. If he  
 9 testified, show the transcript. He can't testify  
 10 whether another witness is telling the truth or not.  
 11 He doesn't know the context.

12 MR. PORTNOY: Counsel, I am not asking your  
 13 client whether Mr. Cesca is telling the truth. I am  
 14 asking your client whether his recollection is  
 15 inconsistent with my representation of Mr. Cesca's  
 16 testimony. If my representation is inaccurate, then  
 17 there is no harm done.

18 But the question is whether your client has  
 19 a recollection which is inconsistent with my  
 20 representation that Mr. Cesca says he received a call  
 21 from Mr. Knight, got a message but did not actually  
 22 speak with him.

1 MR. DOWD: On the 23rd.

2 MR. PORTNOY: On the 23rd of July.

3 THE WITNESS: It's possible.

4 MR. DOWD: Well, anything is possible.

5 What's your recollection? Did you talk to  
 6 Cesca?

7 THE WITNESS: I did talk to Cesca.

8 MR. DOWD: Okay. That's your recollection.

9 BY MR. PORTNOY:

10 Q But you don't have a clear recollection as  
 11 to when?

12 A No. I didn't mark it on a calendar or  
 13 write a letter.

14 Q At the time that deposition transcripts  
 15 were released to the White House, did you approve of  
 16 the decision to release those transcripts?

17 A Yes, under the conditions and the  
 18 circumstances that were present.

19 Q Is it your understanding that Secretary  
 20 Bentsen approved?

21 A Yes.

22 Q Did you discuss that --



1 A Again, with those conditions.

2 Q And you discussed that directly with  
3 Secretary Bentsen?

4 A Yes.

5 Q Prior to the release of the transcript?

6 A The conditions explicitly, no. He was  
7 not -- you have to understand, the conversation I had  
8 with him was quite brief. And the assumption in all  
9 of this was that the legal and other issues would be  
10 examined and an issue wouldn't be presented to him if  
11 there were any other problems. This was just a  
12 matter of his opinion.

13 Q For clarity, sir, I just wanted -- what I  
14 am really trying to ask you is whether Secretary  
15 Bentsen was contacted in advance of the release; you  
16 have testified that he was.

17 MR. O'CALLAGHAN: Off the record for a  
18 second.

19 (Discussion off the record.)

20 BY MR. PORTNOY:

21 Q You indicated that there were certain  
22 conditions imposed upon the release of the deposition

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1 transcripts to the White House?

2 A Yes.

3 Q I believe you testified that those  
4 conditions were consistent with conditions that  
5 applied to your release of documents to the White  
6 House on the 6th of July?

7 A The letter or the documents was in May, May  
8 12th. There was a letter from Joel Klein to me, and  
9 then on July 23, there was a letter from Steve McHale  
10 to Jane Sherburne. The spirit and the principles in  
11 both letters were consistent.

12 Q On the 6th of July, you met with  
13 Mr. Cutler, did you not?

14 A No, I met with Mr. Cutler to deliver to him  
15 for his viewing, and then return to the Treasury  
16 Department, some, quote, sensitive documents.

17 Q And the purpose of that review, as you  
18 understood it, sir?

19 A It was part of his preparation for the  
20 hearings, trying to find out what had occurred so he  
21 could report to Congress.

22 Q Was this the same purpose underlying the

1 release of the deposition transcripts to the White  
2 House on the 23rd of July?

3 A Yes.

4 Q So --

5 MR. DOWD: Wait a minute. Wait a minute.  
6 Read that question back. That's not right. You say  
7 the purpose in July 6 was to show sensitive documents  
8 to him. That's not the same purpose as the release  
9 of the deposition transcripts, the conditions. Those  
10 are two different things; one is an apple, one is an  
11 orange. The release of the transcripts has certain  
12 conditions. You can't use them, you showed him  
13 sensitive documents so he could see them, you took  
14 them back to the Treasury. It is not the same.

15 THE WITNESS: It is part of the same  
16 process.

17 MR. DOWD: That wasn't the question,  
18 whether it was the same process. Jeez, you got to be  
19 careful here. This is treacherous.

20 BY MR. PORTNOY:

21 Q Would you please explain whether, in your  
22 view, the meeting on July 6th in which you showed

1 documents to Mr. Cutler and the release of the  
2 deposition transcripts on the 23rd of July were part  
3 of the same process?

4 A Let me back up. Lloyd Cutler was, as he  
5 testified before the House and the Senate, conducting  
6 an investigation to report to Congress, where he  
7 reviewed all the relevant information. Much of the  
8 relevant information was in the custody of the  
9 Treasury Department. He asked for access to that  
10 information. We only agreed under certain  
11 conditions.

12 One of the conditions listed in the May  
13 12th letter to me from Joel Klein, I believe, was  
14 that sensitive information would not be shown, except  
15 under limited circumstances, to Mr. Cutler himself.  
16 That probably occurred on July 6, although I don't  
17 have a clear recollection of the date and time.

18 And as we understood it, the purposes to  
19 which he was putting the review of the documents and  
20 the review of the depositions was a truth-finding  
21 exercise, to report to the Congress and to the Chief  
22 of Staff of the White House, who had engaged him in

1 this review.

2 Q And you viewed Mr. Cutler's investigation  
3 or reviews as a proper and lawful inquiry; did you  
4 not?

5 A It certainly was presented that way to me.

6 Q And it was your intent to cooperate with  
7 that inquiry to the extent that you could?

8 A Absolutely. We had, frankly, no choice.

9 Q Do you view the confidentiality practices  
10 that were applicable to your July 6th meeting with  
11 Mr. Cutler and the release of the transcripts on the  
12 23rd of July as being consistent?

13 A Yes, very consistent.

14 Q So your release of the transcripts was part  
15 of an ongoing process of cooperation with the White  
16 House?

17 A In their -- in -- I want to be precise  
18 here.

19 We were cooperating with not the White  
20 House, we were cooperating with the counsel to the  
21 President on a matter for which he was conducting a  
22 review/investigation.

1 Q Did you consider the Inspector General's  
2 transcripts to be the property of the Treasury  
3 Department in some fashion?

4 A I considered those to be in the custody of  
5 the Inspector General, and a product that was created  
6 because of a request from the Secretary. They were  
7 not -- I did not consider them -- I considered them  
8 under the control of the Inspector General.

9 Q And the Inspector General was agreeable to  
10 the release of the transcripts on the 23rd of July?

11 A We would have done nothing against the will  
12 of the Inspector General.

13 Q So if the Inspector General had expressed  
14 reservations --

15 A Any reservations, of any sort, we would not  
16 have done it.

17 Q You would not have released the  
18 transcripts?

19 A We didn't do it. He did it. The Secretary  
20 did not have the transcripts to release, and the  
21 release did not come out of the Secretary's office.

22 Q They did, sir, come from Mr. McHale who is

1 not part of the Inspector General's Office, so --

2 A But I assume that was at the election of  
3 the Inspector General. No one has explained to me  
4 anything different than that.

5 Q Are you aware of anyone in the Treasury  
6 Department who pressured Mr. Cesca in any way to  
7 consent to release the deposition transcripts to the  
8 White House?

9 A Absolutely not. We would not have  
10 tolerated that.

11 MR. PORTNOY: That's all I have. Thank  
12 you.

13 MR. O'CALLAGHAN: A couple of quick  
14 follow-ups, shouldn't take too long.

15 EXAMINATION

16 BY MR. O'CALLAGHAN:

17 Q This is -- I want to show you -- I asked  
18 you earlier about conversations you had with either  
19 Mr. Cutler or anyone in his office during July of  
20 1994, and I showed you a phone list from his office  
21 earlier. And I neglected to show you a one-page list  
22 to refresh your recollection to see if it would help

1 you.

2 This one is from July 21, 199, Bates  
3 S 007928, and there is an entry there it says "talked  
4 to Ed Knight." That's on the 21st, which would be  
5 a -- looking at that, does that refresh your  
6 recollection?

7 A Again, can you tell me -- I think I have a  
8 fairly good recollection of when I talked to the  
9 counsel to the President of the United States. I  
10 have no recollection of talking to him during the  
11 month of July. Absolutely none. And there are lots  
12 of attorneys in that office. And lots of reasons why  
13 I would be speaking to an attorney. And if you are  
14 asking me did I speak to Lloyd Cutler on that date, I  
15 have no recollection of that.

16 Q Then my other part of the question was,  
17 including that, was whether you spoke with anyone  
18 else in his office?

19 And I'm looking for his recollections of  
20 people in that office in July.

21 A You know, it is really difficult to --

22 MR. DOWD: No?

1 THE WITNESS: No.

2 BY MR. O'CALLAGHAN:

3 Q Thank you. During July -- March through  
4 August 1994, at that time who was general counsel of  
5 Treasury?

6 A March through August?

7 Q Yes.

8 A Jean Hanson.

9 Q Who was the deputy general counsel during  
10 that time period?

11 A Dennis Foreman.

12 Q Were those two people possible subjects of  
13 the investigation being done by the IG's office?

14 A They were certainly witnesses.

15 Q Were they -- was their conduct one of the  
16 questions of the inquiry?

17 A Yes.

18 Q From what office were the transcripts  
19 transferred from Treasury to the White House?

20 A You were telling me. I don't have any  
21 knowledge of that.

22 Q Okay, but you spoke with Mr. McHale; right,

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1 on the 23rd?

2 A I did.

3 Q Do you know, did he release the  
4 transcripts?

5 A Well, I didn't -- I may have. He was -- I  
6 assume the 22nd or 23rd, I was talking to attorneys  
7 in that office.

8 Q Is it your understanding that attorneys in  
9 that office were the ones who brought -- who  
10 delivered the transcripts to the White House on the  
11 23rd?

12 A I don't have any knowledge of that. If you  
13 tell me that, I have no reason to deny it.

14 Q Did you know, at the time, did you know --

15 A At the time, I did not know that.

16 Q At the time, who did you think was going to  
17 deliver the transcripts to the White House?

18 A I think the IG.

19 Q Did Mr. Cesca tell you that his office was  
20 going to make the transfer of the transcripts?

21 A No.

22 Q I just want to be clear. You approached



1 the Secretary about his opinion on the propriety of  
2 providing the transcripts; is that correct?

3 A His opinion on whether we should.

4 Q Okay. How did you become aware of the  
5 request by the White House that they wanted the  
6 transcripts? Who informed you?

7 A Either someone from the Inspector General's  
8 Office or from the Office of General Counsel.

9 Q But it was someone from within Treasury?

10 A Yes.

11 Q Mr. Portnoy just asked you a question,  
12 something about who possessed the transcripts and who  
13 they belonged to. Is it your understanding that the  
14 investigation that was conducted with regard to --  
15 for the OGE, was done jointly by the RTC Inspector  
16 General's Office and the Treasury Inspector General's  
17 office?

18 A I think they cooperated. But, my  
19 understanding of the law that applies in this area is  
20 that the Inspector Generals operate independently of  
21 each other.

22 Q Well, with regard to this -- this was a

---

1 unique investigation; wasn't it?

2 A Perhaps.

3 MR. DOWD: If you know. Don't guess.

4 THE WITNESS: I don't know.

5 BY MR. O'CALLAGHAN:

6 Q Are you aware -- do you know that the  
7 Treasury Inspector General's Office and the RTC  
8 Inspector General's Office each had a representative  
9 conducting the interviews during the process?

10 A No.

11 Q Were you ever informed of how the process  
12 was set up?

13 A I did not want to interfere with the IG's  
14 office.

15 MR. DOWD: Answer the question.

16 THE WITNESS: No.

17 BY MR. O'CALLAGHAN:

18 Q So, what is your premise for your  
19 conclusion that the transcripts were under the  
20 control of the Treasury Inspector General's Office?

21 A Because I assumed they are the ones who had  
22 custody of them.

1 Q So you made the assumption that because  
2 they had custody that they were under their control?

3 A Yes.

4 Q Do you have any understanding whether the  
5 RTC Inspector General's Office had any proprietary  
6 rights over the transcripts?

7 A No.

8 Q You don't have an understanding or you  
9 don't think they had it?

10 A I am not aware -- I am aware subsequently  
11 that there was an issue raised, but at the time, I  
12 was not aware of any issue between the two offices.

13 Q I show you one last document.

14 MR. DOWD: Is that a promise?

15 MR. O'CALLAGHAN: That is a promise.

16 BY MR. O'CALLAGHAN:

17 Q Bates stamped 11124. It is a one-page  
18 document.

19 A Okay.

20 Q Have you seen this document before?

21 A I don't recall seeing it.

22 Q For the record, it is a one-page document,

1 appears to be an E-mail. Does this look like a  
2 Treasury E-mail to you from that time period?

3 A You know what this is, it is an E-mail,  
4 appears to me, not on the LAN, L-A-N, system, but on  
5 the EIS system, which I did not use, which Ken was  
6 on, but I was not on.

7 Q Was there a place on the system where a  
8 message could have been sent to your name?

9 A It could have been sent to my name but I  
10 wouldn't have read it because I did not use that  
11 system.

12 Q Did you ever have a discussion with  
13 Mr. Schmalzbach in July of 1994 with regard to RTC  
14 having problems with attaching transcripts to the IG  
15 report?

16 A No. I don't recall any of this.

17 Q So you have no recollection of any contact  
18 between Ms. Kerner and Mr. Schmalzbach on this issue?

19 A No.

20 Q Has Mr. Schmalzbach since approached you on  
21 this subject?

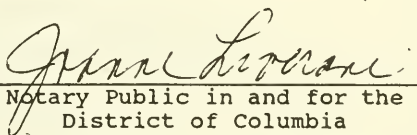
22 A No, no one has.

- 1 Q Were you familiar with the contents of the  
2 E-mail as you just read it?
- 3 A No.
- 4 Q Did you make a call to Jack Ryan at the end  
5 of July or August?
- 6 A I have no recollection of that.
- 7 Q Did you make a call to Mr. Adair?
- 8 A No, I have no recollection of that.
- 9 Q Have you ever made a call to Mr. Ryan?
- 10 A I have no recollection of every calling  
11 him. I try not to deal with the RTC.
- 12 Q How about Mr. Adair, have you ever called  
13 him?
- 14 A I have no recollection of that.
- 15 Q Have you ever had any conversations with  
16 Ms. Kulka?
- 17 A I had breakfast with Ms. Kulka a few months  
18 ago, and I've met her at RTC oversight committee  
19 meetings since being general counsel, but before  
20 this, never.
- 21 Q I'm sorry. Since before this?
- 22 A I mean since -- since I became -- before I

- 1 was general counsel, I never recall talking to Ellen  
2 Kulka. That would not have been a call for me to  
3 make. I was not in the general counsel's office.
- 4 Q Did Mr. Schmalzbach ever tell you he sent  
5 this E-mail to your attention?
- 6 A No.
- 7 Q Did he ever ask you if you called Mr. Ryan  
8 in reference --
- 9 A I have no recollection, no.
- 10 Q -- to this?
- 11 MR. O'CALLAGHAN: Okay. I have no further  
12 questions.
- 13 MR. PORTNOY: I have nothing.
- 14 (Whereupon, at 4:52 p.m., the deposition  
15 was concluded.)

16  
17 -----  
18 EDWARD S. KNIGHT  
19  
20  
21  
22

I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000

DEPONENT Edward S. Knight

## ERRATA

| <u>PAGE</u> | <u>LINE</u> | <u>CHANGE FROM</u>                                       | <u>CHANGE TO</u> | <u>REASON</u>   |
|-------------|-------------|--|------------------|-----------------|
| 25          | 8           | delete "I don't"   |                  | clarification * |
| 27          | 1           | delete "on"  |                  |                 |
| 27          | 11          | add "lawyers" after "which" and before "communicated"    |                  |                 |
| 27          | 14          | add "Schmalzbach" after "Ken" and "McHale" after "Steve" |                  |                 |
| 27          | 21          | add "[Steve McHale]" after "he"                          |                  |                 |
| 34          | 22          | delete "I met -- no"                                     |                  |                 |
| 36          | 2           | delete "I just --", capitalize "It"                      |                  |                 |
| 50          | 4           | delete "who is the only -- Lloyd Cutler"                 |                  |                 |
| 57          | 22          | move "to" from before "us" to after "us"                 |                  |                 |
| 60          | 13          | add "Schmalzbach" after "Ken"                            |                  |                 |
| 62          | 10          | add "4" after "199" and delete "had"                     |                  |                 |
| 74          | 15          | delete "your" and replace with "the Secretary's"         |                  |                 |
| 111         | 10-11       | delete " - I can't - I"                                  |                  |                 |
| 123         | 17          | delete "In their - in -"                                 |                  |                 |
|             |             |  |                  |                 |
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\* THE REASON FOR ALL THE CHANGES IS FOR CLARIFICATION.



**DEPOSITION OF KEITH WAYNE MASON  
IN RE: S. RES. 120**

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**WEDNESDAY, OCTOBER 25, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of KEITH WAYNE MASON, called for examination pursuant to notice of deposition, at 3:48 p.m. in Room 59 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

TERRENCE B. ADAMSON, Esq.  
Kaye, Scholer, Fierman, Hays & Handler  
901 Fifteenth Street, NW  
Washington, DC 20005  
On behalf of the Deponent.

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## P R O C E E D I N G S

MR. BARTOLOMUCCI: Mr. Mason, before we begin the questioning, there are some preliminary matters I have to read into the record. This deposition is being conducted pursuant to Senate Resolution 120, which establishes a Special Committee to investigate Whitewater Development Corporation and certain other related matters. Section 1(b)(2)(a) of the resolution authorizes investigation and public hearings into whether any person has improperly handled confidential Resolution Trust Corporation information relating to Madison Guaranty Savings & Loan Association, or Whitewater Development Corporation, including whether any person has improperly communicated such information to individuals referenced therein. This is going to be the focus of today's deposition.

The deposition is being conducted in advance of public hearings to be conducted in November. You may or may not be called to testify at those hearings. I will ask you a series of questions, and you will be testifying under oath. If

4

you don't understand a question, let me know and I will rephrase it. If at any point you need a break, just let me know and we'll take one.

The stenographer will prepare a record of questions and answers. The deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings, you will receive a letter from the Committee telling you that you may come to the Senate to review the transcript of your deposition and make note of any corrections or transcriptions on an errata sheet.

You may be represented by counsel, and I see that you are represented by counsel today. Objections to the form of the questions will be noted for the record. Counsel may object on grounds of privilege or relevance. The Committee chairman may rule on objections where you refuse to answer a question.

Would you go ahead and swear in the witness.

Whereupon,

KEITH WAYNE MASON

1 was called as a witness and, having first been duly  
2 sworn, was examined and testified as follows:

3 MR. ADAMSON: Could I just interject one  
4 small thing, if I could --

5 MR. BARTOLOMUCCI: Absolutely.

6 MR. ADAMSON: -- because it wasn't actually  
7 covered there. Mr. Mason is, of course, appearing  
8 voluntarily. There are certain issues of privilege  
9 which I think have been independently discussed  
10 between the Committee and the White House counsel  
11 over documents. I don't know the appropriate time to  
12 raise those, I suppose when you get a question that  
13 those might be involved. I am, of course, not the  
14 party necessarily to invoke that. I can just bring  
15 it to your attention.

16 MR. BARTOLOMUCCI: Well, if you feel that  
17 there's some point of privilege that needs to be  
18 raised during the course of the deposition, you're  
19 free to do that.

20 MR. ADAMSON: Okay. I'll certainly state  
21 the basis, if I do so, of what I understand to be a  
22 claim of privilege, although I am representing

---

1 Mr. Mason individually, who is no longer employed at  
2 the White House. That's just what I am told is the  
3 understanding between the Committee and the White  
4 House with respect to the White House's claim of  
5 privilege. It is not for me to assert, obviously,  
6 but I will make an observation of what I understand,  
7 if I sense that it's raised by a question.

8 Thank you.

9 MR. IVEY: Well, maybe this would be a good  
10 time to just put on the record that yesterday  
11 Mr. Mason apparently had written some notes that were  
12 produced at a meeting, I believe it was October 6,  
13 between the President and Governor Tucker, and  
14 Mr. Ben-Veniste and Mr. Chertoff, counsel for  
15 Majority and Minority for the Committee, had a chance  
16 to review those notes.

17 THE WITNESS: Yesterday.

18 MR. IVEY: Yesterday. And I think they  
19 both concluded that there was nothing in those notes  
20 that was relevant to Whitewater or Madison, and I  
21 think the only caveat was that Mr. Mason was supposed  
22 to review the notes before he testified.

1 MR. ADAMSON: Right. And he has.

2 THE WITNESS: I have.

3 MR. ADAMSON: The only issue would come up  
4 if you were -- just again to state what I understand  
5 the parameters to be, because it's not within my  
6 control necessarily to assert, I'm just trying to  
7 honor what I understood had been arranged between the  
8 White House counsel, whose privilege it is, and the  
9 Committee staff, and that is that if you were to ask  
10 what was discussed at this meeting between the  
11 President -- that Mr. Mason attended between the  
12 President and Governor Tucker, then his response is  
13 to be limited pursuant to that agreement to the  
14 subject matters already disclosed by Counsel Cutler's  
15 letter to the House, as well as to be able to exclude  
16 things that might be relevant to the Committee's  
17 inquiry to state negatively, if that's the case, that  
18 they were not discussed, but not to go into the  
19 substance of the meeting or the substance of his  
20 notes of the meeting, which he has reviewed pursuant  
21 to the White House telling him to review before he  
22 came in here, but when those came up, I think we

1 stated what our understandings are.

2 MR. BARTOLOMUCCI: It is not my  
3 understanding that Mr. Mason may not testify about  
4 the content of that meeting. I think that's  
5 precisely why we're here. And I was not informed  
6 that there was certainly any agreement worked out  
7 between the Special Committee and the White House  
8 counsel's office that those matters would not be  
9 discussed.

10 Glenn, do you have a contrary  
11 understanding?

12 MR. IVEY: Well, I guess it depends on what  
13 was said at the meeting. I notice that when you were  
14 reading your preamble there, one of the objections  
15 you left off was scope, at least if you mentioned it  
16 I didn't hear it. And to the extent that there were  
17 conversations between Governor Tucker and the  
18 President that have nothing to do with the scope of  
19 the resolution, scope of our investigation, I think  
20 there would be a legitimate question as to why we  
21 would inquire about that.

22 I mean, my understanding was that the



1 questioning with respect to that meeting would be  
2 about conversations or the absence thereof with  
3 respect to Whitewater or Madison Guaranty, the  
4 criminal referrals, which is where the Republicans  
5 seemed to be going last year in the report that was  
6 written.

7 MR. BARTOLOMUCCI: That would be the focus  
8 of the deposition. And just for the record, I said  
9 relevance was a grounds for objection, by which I  
10 meant relevant to the scope of the resolution, but  
11 that is a basis for objection, the matter falling  
12 outside of the scope.

13 Necessarily to dig at issues within the  
14 scope of the resolution, the question may have to be  
15 phrased somewhat more broadly than that in order to  
16 dredge up a relevant response, if there is one, but I  
17 don't think that we'll have a problem with what I've  
18 planned to ask. So why don't we go ahead and see how  
19 it goes.

20 MR. ADAMSON: I think that's good.

21 EXAMINATION

22 BY MR. BARTOLOMUCCI:

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10

1 Q Mr. Mason, would you state your full name  
2 for the record.

3 A Keith Wayne Mason.  
4  
5

6 Q Mr. Mason, where do you live?

7 A Atlanta, Georgia.

8 Q Are you employed in Atlanta?

9 A Yes.

10 Q Who is your employer?

11 A I work with a public affairs/communications  
12 firm called Public Strategies, Inc., which is  
13 headquartered in Austin, Texas, and I am the director  
14 of the Atlanta office and a senior vice president of  
15 the company.

16 Q How long have you held that position?

17 A Since January 1 of 1995.

18 Q And what were you doing prior to that time?

19 A Prior to that time, I was deputy assistant  
20 to President Clinton for intergovernmental affairs at  
21 the White House.

22 Q So that was until January 1 of '95?

1 A Until December 1 of '94. I was employed in  
2 that position from August 9 of 1993 to December 1 of  
3 1994, and then I moved and took some time off in the  
4 month of December. That was here in Washington, of  
5 course.

6 Q Who hired you to that White House position?

7 A What do you mean by -- I mean the  
8 President -- it's a Presidential appointment, and Roy  
9 Neel was the person who was the main contact in terms  
10 of my joining the Administration in terms of  
11 formalizing that.

12 Q That's what I was after.

13 A Yes. And I was deputy chief of staff at  
14 that time.

15 Q And during that time, who was your  
16 supervisor or boss?

17 A My immediate superior was Marsha Hale, who  
18 is the assistant to the President and director of the  
19 office of intergovernmental affairs in the White  
20 House.

21 Q Who was her supervisor, her boss? Who did  
22 she report to?

1 A Now or then or --

2 Q Let's say in 1993.

3 A The chief of staff, Mack McLarty, and of  
4 course the President.

5 Q Sure. Can you summarize for us what your  
6 duties were?

7 A My duties in that position as deputy  
8 assistant to the President was to serve as the  
9 primary liaison between the White House and the  
10 governors and their staffs in the respective  
11 gubernatorial associations. I worked within the  
12 Administration to that end and facilitated meetings  
13 with governors, with other Administration officials  
14 in the White House and also worked in the policy area  
15 with the policy groups on the formulation of domestic  
16 policies, and how they affected state governments in  
17 particular.

18 And I also communicated the present  
19 Administration's position with respect to those kind  
20 of issues and tried to obtain support from governors  
21 and their associations on behalf of the  
22 Administration's policies and objectives.

1 Q Did that job require you to travel to other  
2 states as part of your duties?

3 A At times I did, yes, with the President and  
4 sometimes I would travel to governors meetings, like  
5 the National Governors Association meetings and  
6 Southern Governors and others such as that.

7 Q Did you ever travel to Arkansas?

8 A No.

9 Q Prior to August -- strike that.

10 Prior to October 6, 1993, had you ever met  
11 Governor Jim Guy Tucker?

12 A I had met Governor Tucker. I met him at  
13 the southern governors meeting in Richmond, Virginia  
14 in September of '93, at that time when I was down  
15 there attending that conference, and I may have met  
16 him when I was working for Governor Zell Miller of  
17 Georgia when I was his chief of staff at another  
18 governors meeting, but I don't necessarily recall it.

19 Q Are you aware of the Committee's document  
20 request to the Office of the Inspector General of the  
21 Resolution Trust Corporation?

22 A No, I'm not aware of what you're speaking

---

1 of.

2 Q Have you ever been asked to produce  
3 documents, notes or memoranda with respect to  
4 Whitewater or Madison Guaranty or any issue  
5 pertaining to the RTC?

6 A Yes. When I was in the White House, I  
7 recall there were a couple of requests for production  
8 of documents or subpoenas or whatever from either the  
9 independent counsel or one of the relevant Committees  
10 here in the Congress that was disseminated throughout  
11 the staff with respect to documents of that nature,  
12 and I had no documents of that nature, so, therefore,  
13 I did not submit any documents of that --

14 Q You turned over nothing?

15 A Turned over nothing.

16 Q Do you remember when that was?

17 A There was -- I remember something occurred  
18 in March of '94, and there may have been another time  
19 in the summer of '94, but I recall a couple of  
20 situations where everybody on the staff had to search  
21 their files, search their trash cans, sign a document  
22 indicating that they had complied with the request.

1 And having done so, that's about all I recall.

2 Q Other than your counsel, have you spoken to  
3 anyone about this deposition?

4 A What do you mean, like that I had to come  
5 up here?

6 Q Well, excluding conversations of that  
7 nature. Again other than your counsel, have you  
8 talked to anyone about what was going to be discussed  
9 at the deposition?

10 A Let me just take a break just for a  
11 moment.

12 (Witness conferred with counsel.)

13 You mean upon learning that I had this  
14 deposition coming up or -- I'm a little confused.

15 Q Right. Let's back up a little bit. When  
16 were you asked to be deposed?

17 A Last Wednesday.

18 MR. ADAMSON: Roughly.

19 THE WITNESS: Yeah.

20 BY MR. BARTOLOMUCCI:

21 Q So since Wednesday, excluding your counsel,  
22 did you speak to anyone in attempt to refresh any

1 memory you might have about --

2 A Oh, no.

3 Q No. Did you speak to anyone, other than  
4 your counsel, about advice on how to handle a  
5 deposition?

6 A No.

7 Q Did you speak to anyone about Madison  
8 Guaranty or Whitewater or the Resolution Trust  
9 Corporation?

10 A No. I do read the papers.

11 Q Sure. I only asked whether you had  
12 discussions with people --

13 A Right.

14 Q -- in anticipation of or preparation of  
15 this deposition.

16 A Oh, no, no, that's correct.

17 Q So the only preparatory talks you've had  
18 have been with your attorney?

19 A That's correct.

20 Q You've had no contact with any White House  
21 personnel about this deposition?

22 A No, no.

1 Q Did you tell anyone at the White House that  
2 you were being deposed?

3 A No. I had a conversation with counsel, but  
4 no, I did not indicate to anyone in the White House  
5 that I was participating in the deposition today.

6 Q Do you recall a meeting held on October 6,  
7 1993 between President Clinton and Governor Jim Guy  
8 Tucker?

9 A Yes.

10 Q Did you attend the meeting?

11 A Yes.

12 Q When were you first informed that that  
13 meeting was going to be held?

14 A I think it was the day before.

15 Q Who told you about it?

16 A I received a call sometime the day  
17 before -- it may have been the day before that, I  
18 don't necessarily recall, but I'm fairly confident it  
19 was on the preceding day -- from Dawn Friedkin, who  
20 worked in the office of intergovernmental affairs in  
21 our department within the White House, that this  
22 meeting was going to occur on that day, October 6,

---

18

1 and that she was going to prepare the briefing  
2 memorandum for the President on behalf of Marsha  
3 Hale, who was the director, and that something else  
4 had come up which required Marsha not to be able to  
5 attend this meeting for other commitments within the  
6 department and she asked that I participate in the  
7 meeting and prepare for it to that end.

8 Q So you first heard about the meeting a day  
9 or two before?

10 A Right.

11 Q You were told about this meeting by Dawn  
12 Friedkin?

13 A Correct.

14 Q What was her position at that time?

15 A She was -- I'm trying to recall --  
16 basically the staff director for intergovernmental  
17 affairs, and she reported directly to Marsha Hale.  
18 She kind of served as the person that  
19 administratively got things done in the department.

20 Q Do you mean there's an intergovernmental  
21 affairs department or organization?

22 A In the White House.



1 Q And she was the staffer?

2 A Staff director, yeah. She didn't exercise  
3 any supervisory responsibilities over any of us who  
4 held official positions, but she was the person who  
5 worked most closely with Marsha Hale on the overall  
6 operation of the department.

7 Q Was Marsha Hale the head of that  
8 department?

9 A Marsha Hale was the head of the department,  
10 yes.

11 Q And you testified that she's the person you  
12 reported to?

13 A Correct, right.

14 Q You also testified that Marsha Hale was  
15 going to attend this meeting, but could not because  
16 of conflict?

17 A That's what I was told by Dawn, and I think  
18 that was the case at that time.

19 Q Do you remember what that conflict was?

20 A I do not recall.

21 Q Do you know or did Dawn tell you when the  
22 Clinton-Tucker meeting was first scheduled or

1 arranged?

2 A She didn't mention that, other than that he  
3 was coming -- she gave me the context for his visit  
4 and that he was going to be in Washington that next  
5 day to meet with the Congressional delegation from  
6 Arkansas and that he was going to be talking to them  
7 about this defense finance and accounting center  
8 application that they were submitting to the  
9 Department of Defense for a facility in Arkansas, and  
10 that he was going to come by and visit with the  
11 President on that issue, and that Marsha couldn't be  
12 there and would I be available to attend, and of  
13 course I did.

14 It was not unusual for me to attend these  
15 kinds of meetings. Typically, Marsha and I would go,  
16 or at a minimum, I would go to meetings between the  
17 President and governors. We had had a number of  
18 individual meetings that summer at the National  
19 Governors Association conference in Tulsa, which  
20 Governor Tucker was not in attendance at. And we had  
21 had governors in the White House on several occasions  
22 that fall for other events with respect to NAFTA,

1 health care, the Middle East peace treaty signing.  
2 And I think we had something coming up around that  
3 same period of time for unfunded mandates.

4 Q You're saying it was common for you to  
5 attend a meeting --

6 A Yes.

7 Q -- when the President met with a governor?

8 A Right.

9 Q It would be common for you to sit in?

10 A Right.

11 Q Do you recall sitting in on any other  
12 governor-President meetings in October of '93?

13 A In October of '93, yeah, Governor Ann  
14 Richards was one in particular I recall that was  
15 after this meeting.

16 Q Well, she's memorable.

17 A Yeah. And then there were some others on  
18 the road when we would travel and that type of thing,  
19 but none other than that, I think, in October of '93  
20 in the White House. Those were the two I recall  
21 specifically in the White House in October of '93.

22 Q Now, you said that Dawn Friedkin told you

---

22

1 about the meeting a day or two before it happened  
2 and --

3 A Yes, she had learned about it from the  
4 scheduling office or from the President's office. I  
5 don't recall who.

6 Q And it was at that time that she asked you  
7 to be there?

8 A Yeah.

9 Q Told you that Ms. Hale couldn't be there?

10 A Right, and that she was going to prepare  
11 the briefing memorandum. I had a number of other  
12 things that I was working on at that time, primarily  
13 centered around the NAFTA effort, and we were -- that  
14 particular week I recall that we were in the process  
15 of putting together a possible conference call with  
16 the President and governors on Thursday -- I think  
17 this meeting was on a Wednesday, and Thursday we were  
18 going to have this conference call, but of course we  
19 didn't have it subsequently.

20 But I didn't know at the time I got the  
21 call that we weren't going to have that for other  
22 scheduling reasons.

1 Q Do you remember if Ms. Friedkin called you  
2 in the morning or the afternoon?

3 A I'm pretty sure it was in the afternoon,  
4 because, quite frankly, I was relieved I didn't have  
5 to do the briefing memo because I had a bunch of  
6 other things going on at the time and she had all the  
7 information, so --

8 Q Did she tell you she was going to do it  
9 herself?

10 A Yeah, and that I would look -- that she  
11 would let me take a look at it.

12 Q So she hadn't done it yet, that was your  
13 impression?

14 A She had gotten some information, but she  
15 had not done the briefing memo yet, because I think  
16 that that's when we talked about we'll put in there  
17 that we ought to use this as an opportunity to talk  
18 to Governor Tucker about the NAFTA effort beyond what  
19 he's had on his mind with the defense center.

20 Q So you didn't do any preparation for the  
21 meeting, she was going to do the memo and you just  
22 had to be there?

1 A Yeah. I think I may have called a member  
2 of his staff, his chief of staff at that time, to see  
3 if there was anything else. And I may have spoken  
4 with Carol Rasco, but I don't know that I actually  
5 did. She was the director of the domestic policy  
6 office in the White House. She was an assistant to  
7 the President. She knew Governor Tucker very well.  
8 She was chief of staff to then-Governor Clinton while  
9 then-Lieutenant Governor Tucker was in Arkansas, so I  
10 may have just touched base with her to see if there  
11 was any other federal/state policy issues that he may  
12 be interested in.

13 But like I said, I don't recall that I did,  
14 but that would not have been out of the ordinary for  
15 me to talk with her about a matter concerning  
16 Governor Tucker.

17 Q But that would have been the extent of your  
18 preparation, if any, would have been a call to Rasco?

19 A Yeah, it was pretty much a low,  
20 no-maintenance deal in that sense.

21 Q And you mentioned a phone call to Governor  
22 Tucker's staff director?

1 A Chief of staff. I think his name was Neil  
2 Turner, but don't hold me to that. I think that was  
3 his name.

4 Q Now, are you sure you placed that call or  
5 is that like the Rasco, that it may have happened,  
6 you're not sure?

7 A I'm not sure that I placed that call,  
8 that's correct.

9 Q But you might have?

10 A I might have, because I typically did that  
11 before I went into meetings with governors and the  
12 President, but because this was one that most of the  
13 preparatory work had been done by someone else in our  
14 office, I didn't necessarily feel that I needed to do  
15 that.

16 Q So on the 6th, the day of the meeting, do  
17 you remember when it was held, roughly what time?

18 A Late in the afternoon, 3:00, 4:00,  
19 something like that.

20 Q And do you have a recollection of how long  
21 it lasted?

22 A It was around 30 to 45 minutes. And I

1 don't think it was more than an hour.

2 Q Do you remember where you were before the  
3 meeting took place or what you were doing right  
4 before the meeting?

5 A Yeah.

6 Q Where were you?

7 A I met Governor Tucker in the lobby of the  
8 West Wing as he had come into the White House and  
9 took him into Mack McLarty's office for a meeting  
10 there that was either requested by Mack earlier in  
11 the day or whatever -- or one that the governor had  
12 wanted to do, I can't recall which, and accompanied  
13 him, the governor, into that meeting with Mack  
14 McLarty.

15 Then I went and briefed the President --  
16 excuse me.

17 Q Let's not get to the meeting just yet.

18 A Right.

19 Q You met him at the West Wing. That's where  
20 he would have come into the White House from the  
21 outside?

22 A Right, met him in the West Wing lobby,

1 uh-huh.

2 Q So it would have been -- it was your  
3 responsibility to greet him --

4 A Correct.

5 Q -- when he first arrived at the White  
6 House?

7 A Right.

8 Q And you took him to Mack McLarty's office?

9 A Correct.

10 Q Mr. McLarty was chief of staff at that  
11 time?

12 A He was.

13 Q Did you stay with the governor while he was  
14 meeting with Mr. McLarty?

15 A Yes, except for the time in which I went to  
16 brief the President before the meeting with Governor  
17 Tucker.

18 Q Okay. So you left Governor Tucker with  
19 Mr. McLarty, went to speak to the President?

20 A Correct.

21 Q And do you know if anyone else was with the  
22 governor and Mr. McLarty during that period of time?

1 A I am not sure. There was a member of  
2 Mr. McLarty's staff who did greet Governor Tucker  
3 when he came into the White House. That person was  
4 Bill Burton, B-u-r-t-o-n, who was his staff director,  
5 and I don't know if he was in the meeting with  
6 Mr. McLarty and Governor Tucker or not, or if someone  
7 else was in that meeting. That I'm just not certain  
8 of. It may have just been the three of us, but I --

9 Q Well, I'm talking about the meeting, that  
10 time when you weren't present.

11 A When I left, I don't recall if there was  
12 another person in the room besides the two of them.

13 Q But there may have been a McLarty staff  
14 member or staff assistant?

15 A Correct, right.

16 Q I take it from the fact that this Bill  
17 Burton was at the West Wing, too, that this meeting  
18 with McLarty had been prearranged?

19 A He knew it was coming up. Now, how  
20 prearranged was it, other than it may have been that  
21 morning or whatever. Typically, when someone from  
22 Arkansas, a governor of that level, would come to the



1 White House, or any governor for that matter, if  
2 Mr. McLarty had time on his schedule, he would try to  
3 meet with them before the President met with them,  
4 have them come by his office. We did that on a  
5 number of occasions.

6 Q So Governor Tucker arrives. You greet him,  
7 take him to Mack McLarty's office. You go off to  
8 brief the President?

9 A Well, I stayed in there for a little while,  
10 and he talks about the issues that he's going to talk  
11 to the President about, he -- they talked about the  
12 state of Governor Tucker's health, he had had some  
13 surgery during the summer, and I think there had been  
14 a recent election for lieutenant governor to succeed  
15 Governor Tucker, and that was discussed, the new  
16 lieutenant governor was in there, and that's about  
17 all.

18 Q How long do you think that conversation  
19 lasted, the time for which you were there?

20 A About 15 minutes.

21 Q Okay. So then you leave to speak to the  
22 President?

1 A Correct.

2 Q How long is it before you again see  
3 Governor Tucker?

4 A Five, 10 minutes maximum.

5 Q So you're essentially going to find the  
6 President?

7 A Well, I go to the Oval Office --

8 Q Easy to find.

9 A -- and he's sitting at his desk and he  
10 looks over and says well, how is he doing, I said  
11 he's doing pretty good. And he said well, how does  
12 he look and I said well, he looks better than he was  
13 when I saw him in Richmond last month and he said  
14 good.

15 MR. ADAMSON: I think we're getting into  
16 the Presidential communications now, which is what I  
17 understand to be -- it's not my privilege, mind you,  
18 but what I've been told the ground rules are that  
19 have been established. I wasn't a party to the  
20 agreement -- but the actual subject matter of the  
21 discussions with the President have to be somewhat  
22 restricted, and I'd interpose an objection on some

1 grounds, relevance or scope or something like that.

2 MR. BARTOLOMUCCI: Well, are you making a  
3 formal objection? I mean --

4 MR. ADAMSON: Well, I think you indicated I  
5 needed to say something for the record. I'm pleased  
6 to do that. I'm really trying to do it under the  
7 secondhand ground rules which I'm not a party to, and  
8 that's my problem.

9 MR. BARTOLOMUCCI: Let me say this: I  
10 appreciate the fact that you're trying to respect  
11 what you heard, what you were told. I think maybe if  
12 we're getting into an area that's inappropriate,  
13 maybe that should fall to Mr. Ivey to raise that.

14 MR. IVEY: No, no, not necessarily. I  
15 mean, although I do agree with what he's saying, the  
16 way we've typically handled this concern on the White  
17 House is that it is raised by counsel for the  
18 deponent, but I mean, I take the point.

19 I mean, I don't think the Committee's goal  
20 is to find out whether Mr. Clinton inquired about  
21 Mr. Tucker's health or not.

22 MR. BARTOLOMUCCI: I didn't ask that

1 question.

2 THE WITNESS: Right.

3 MR. IVEY: I understand that, but I'm just  
4 saying that counsel is saying we should try and  
5 direct the questioning a little bit and I think he  
6 has a valid point there.

7 MR. BARTOLOMUCCI: Fair enough. I don't  
8 think I have asked any question so as to elicit a  
9 response which may have tread on that. I haven't  
10 tried to cut off the witness.

11 MR. ADAMSON: I understand. I was biting  
12 my tongue, but --

13 BY MR. BARTOLOMUCCI:

14 Q Okay. So you said it was about five  
15 minutes before you again saw Governor Tucker?

16 A Correct.

17 Q And how did that work? Did you go back to  
18 Mack McLarty's office?

19 A Andrew Friendly on the President's staff  
20 escorted him into the Oval Office for the meeting.

21 Q Who else was in the Oval Office when Andrew  
22 Friendly brought the governor to the Oval Office?

1 A The White House photographer came in, made  
2 a few pictures, myself and the President, Governor  
3 Tucker, and maybe one of the stewards from the mess  
4 may have brought a cup of coffee in or something like  
5 that.

6 Q So you and the President were in the Oval  
7 Office. Governor Tucker is escorted in. There's  
8 some press and maybe some food service, and --

9 A Some photos, no press.

10 Q Right, right.

11 A White House photographer, which may have  
12 been released to the press for some other purpose,  
13 but yeah, those people.

14 Q So the photo people -- photo people and any  
15 mess people would then have left, leaving just the  
16 three of you; is that right?

17 A Correct.

18 Q So for the bulk of the meeting, there are  
19 just the three of you there?

20 A Andrew Friendly may have come in as the  
21 meeting developed to try to conclude the meeting.

22 Q To signal that you guys should wrap this

1 up?

2 A Correct. Or Nancy Hernreich may have done  
3 that, who is the President's personal assistant.

4 Q Did you say the meeting lasted about 30 or  
5 40 minutes; is that right?

6 A Yes.

7 Q Without getting into the substance of the  
8 conversation, was the meeting primarily conversation  
9 between the governor and the President? I guess I'm  
10 asking, what was your role in the meeting? Were you  
11 just an observer? Did you participate in  
12 discussions?

13 A Primarily as an observer and someone to  
14 record what they were discussing and to follow up as  
15 directed by the President. There would be certain  
16 matters in which he would turn to me and say do you  
17 know anything about this or we need to follow up on  
18 that or this is important, make sure we do this,  
19 those kinds of customary staff roles. And there  
20 would be some subjects which I would have some  
21 additional information about that I would provide at  
22 the appropriate time.

1 Q So when you say you recorded the meeting, I  
2 take it you mean you took notes?  
3 A Correct.  
4 Q You didn't have a tape recorder?  
5 A No tapes, no.  
6 Q And as far as you know, there were no tapes  
7 of it?  
8 A Correct.  
9 MR. IVEY: No 18-minute gap either, you  
10 know.  
11 MR. BARTOLOMUCCI: But maybe in the notes.  
12 (Laughter.)  
13 BY MR. BARTOLOMUCCI:  
14 Q Until the meeting concluded, were you in  
15 the room for the entire meeting?  
16 A Yes.  
17 Q You never left for --  
18 A No.  
19 Q -- any reason? Make a phone call?  
20 A No.  
21 Q Go to the bathroom?  
22 A No.

1 Q Snack?  
2 A No, no.  
3 Q Did the President and the governor speak  
4 privately at any point?  
5 A They never spoke outside of my earshot.  
6 Q So you heard everything that was discussed  
7 at the meeting?  
8 A Yes.  
9 Q Now, when Andrew Friendly or someone gave  
10 the signal that the meeting should end, what happened  
11 then?  
12 A The President or -- somebody got up from  
13 their seats and began to conclude the meeting. And  
14 also at the end of the meeting -- and we had known  
15 this was going to take place -- there were some  
16 people from Arkansas from the governor's staff who  
17 were accompanying him on this visit who came in for  
18 pictures with the governor and the President, which  
19 is also a customary thing.  
20 Q That happened near the end of the meeting?  
21 A Near the end of the meeting, correct.  
22 Q Would that have been Drake Keith and Cecil

1 Alexander?

2 A I don't -- it may have been one of them. I  
3 recall that one of those individuals that were in  
4 that memo was not there. And then the other person  
5 that was there was a lady by the name of Sandy  
6 Ledbetter, who worked for Governor Clinton,  
7 then-Governor Clinton and now-Governor Tucker. She  
8 was with him on the trip and she came in for a  
9 picture.

10 Q Would you say that name again?

11 A I think it's Sandy Ledbetter.

12 Q And she came in for a photo op?

13 A A photo. Yeah, I think she and one or two  
14 of the other people, including the security, were  
15 being shown around the West Wing by some other people  
16 on the White House staff during that time, which I  
17 knew was going to take place.

18 Q And you also think that either Drake Keith  
19 or Cecil Alexander came in for the photo opportunity?

20 A I think they did, but they may not have  
21 been there. I don't know. I do know that there was  
22 a member of Governor Tucker's security detail who had

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1 worked for President Clinton when he was governor who  
2 was accompanying him on this trip that came in and  
3 got his picture made with the President and gave him  
4 a bear hug.

5 Q Other than this security person, do you  
6 remember how many other people accompanied the  
7 governor to the White House?

8 A Well, Sandy Ledbetter, of course, that I  
9 mentioned to you, and maybe one more -- to the White  
10 House?

11 Q Right. We're not talking about who may  
12 have come to Washington, but to the White House.

13 A Yes.

14 Q Security person, Sandy Ledbetter and maybe  
15 one other person.

16 A Right.

17 Q I'm going to represent to you that I have a  
18 copy of the memo prepared in advance of the  
19 governor's meeting, prepared -- memo prepared for the  
20 President, and it does list a number of participants,  
21 the President, Governor Tucker and it says Marsha  
22 Hale, Drake Keith, Cecil Alexander, and you're not



1 listed because Marsha had to cancel at the last  
2 minute.

3 A After the memo was done, I presume, yes.

4 Q Okay. The date on the memo is October 5.  
5 That would have been the day before the meeting. And  
6 since you're not listed, does that at all refresh  
7 your memory about when you were informed about the  
8 meeting?

9 A No, I recall being informed the day before.

10 Q The day before. Earlier you said it might  
11 have been two days before.

12 A Well, whatever, somewhere -- it wasn't the  
13 day of. It was not the day of the meeting. I knew  
14 that I was --

15 Q It was the day before?

16 A Yeah.

17 Q So apparently you spoke to Dawn, Dawn  
18 Friedkin --

19 A Yes.

20 Q -- after she prepared the memo, since --

21 A That's probably the case, given that my  
22 name was not on there. I had been contacted to

1 participate in the meeting. Logic would indicate  
2 that she probably had already prepared it. And it  
3 may have been a situation where Marsha had a  
4 potential conflict and might have been able to make  
5 the meeting and you need to be prepared to attend in  
6 case she is not able to make the meeting, that type  
7 of thing.

8 Q Do you know who Drake Keith and Cecil  
9 Alexander are?

10 A No.

11 Q You've never met them?

12 A I don't recall ever meeting them, unless  
13 they were one of the people there at the meeting,  
14 which I can't recall who these other people were.

15 Q Right. After the photo opportunity, did  
16 the governor leave the White House immediately?

17 A He left the President's office, and I was  
18 under the impression that he was leaving the White  
19 House immediately.

20 Q So you didn't escort him from the White  
21 House?

22 A The President and the governor and I and

1 some of the other individuals that I mentioned to you  
2 were walking out of the Oval Office into the  
3 reception area of the President, and then they walked  
4 on down the hall. I did not walk with them out to  
5 the grounds.

6 Q And who was "they"?

7 A The President stayed back. Governor Tucker  
8 and Sandy Ledbetter and the state trooper and one or  
9 two of the other individuals, I don't recall who else  
10 they were or how many there were, but there weren't  
11 more than one or two others. I think Carol Rasco may  
12 have come down at that point and said hello and she  
13 may have escorted them out. I just don't recall.

14 Q Did you have to take any action following  
15 the meeting relative to what had come up?

16 A I spoke with one of my colleagues in our  
17 department, John Hart, who was also a deputy  
18 assistant to the President, who was managing the  
19 health care issue, about an issue that Governor  
20 Tucker had raised during the meeting.

21 I also think I talked to someone in the  
22 Office of Cabinet Affairs about an issue that

1 Governor Tucker had raised in the meeting.

2 Q Was there any other sort of follow-up?

3 A During the NAFTA debate, I followed up with  
4 Governor Tucker's staff on his interest in the  
5 passage of NAFTA, given some things that he had said  
6 to the President in the meeting and I think they may  
7 have called about the photo and I may have made an  
8 inquiry into the photo office or something about  
9 that.

10 Q Do you remember talking to anyone else in  
11 the White House about that meeting subsequent to it,  
12 let's say the next day or so, or on that day or --  
13 like -- after the meeting or the next day, one day  
14 after that?

15 A Not particularly. I may have talked about  
16 it at our staff meeting the next day, as we would  
17 typically do, you know, but I don't recall -- I don't  
18 recall many other conversations about it. I mean, it  
19 wasn't that significant.

20 Q Did you ever speak to anyone in the White  
21 House counsel's office about that meeting?

22 A Yes.

1 Q When was that?

2 A In July of '94.

3 Q And who did you speak to at that time?

4 A Mr. Lloyd Cutler and Janet -- or Jane

5 Sherburne, I think is her name.

6 Q I think that's right.

7 A At that time, yes.

8 Q And what was that conversation about?

9 MR. ADAMSON: Let me caution you here

10 because I think we're getting into attorney-client  
11 communications when you get into the substance of  
12 that meeting, and I would, therefore, ask the witness  
13 not to get into the substance of the meeting, that  
14 reflects communications with counsel.

15 BY MR. BARTOLOMUCCI:

16 Q Can you say why the meeting was held? Can  
17 you tell me why there was a meeting held with Lloyd  
18 Cutler and Jane Sherburne?

19 A Let me give you the background. I was on  
20 vacation that week, received a call from my office  
21 asking me -- the hearings were going on in the House  
22 or Senate, I don't recall which during this time, and

1 the subject of this particular meeting with Governor  
2 Tucker and President Clinton had come up, and I had  
3 received a call asking me did I recall anything about  
4 it and was I present, and I said yes.

5 And then I then had a telephone  
6 conversation with Mr. Cutler and Jane regarding the  
7 circumstances around the meeting, and I indicated to  
8 them that I had taken notes at that meeting, and then  
9 I directed our office to where I thought those notes  
10 might be and they found them and then they faxed them  
11 to me, and I reviewed them. I think there was --  
12 they had typed out the notes and I read over the  
13 typed versus the handwritten portions and made some  
14 corrections and indicated that -- and then that was  
15 it at that point.

16 Q Do you remember why Governor Tucker was in  
17 Washington in October of '93?

18 A He was having a meeting with his -- the  
19 Arkansas Congressional delegation to talk about a  
20 number of federal/state issues that he was concerned  
21 about, and he was also making a pitch to the  
22 Department of Defense about a project that he was

1 interested in within the state of Arkansas, and that  
2 was something that was a priority of the  
3 Congressional delegation as well.

4 Q Now, if memory serves, you said he had  
5 recently been ill or sick?

6 A I recall that he had been in the hospital  
7 sometime in the late summer for some surgery. I  
8 don't recall the nature of it, other than that he was  
9 out for a couple of weeks.

10 Q But there was still some issue about his  
11 health as of October '93? You said you talked to the  
12 President about that a little bit?

13 A Well, in that I had seen him in September  
14 of '93, which was closer to the time when he had been  
15 in the hospital, and I was making a comparison to how  
16 he looked in October versus the time of September.  
17 But I do not recall any questions other than the  
18 kinds of questions you would typically expect from  
19 someone who had had a form of serious surgery.

20 Q Do you know if the President had any other  
21 meetings with Governor Tucker in 1993?

22 A I don't know what occurred in August prior

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1 to my joining the White House.

2 Q Well, I know, on August 9.

3 A I don't know whether there were any  
4 meetings when the President visited the state of  
5 Arkansas. And I did not participate or prepare any  
6 materials for any meetings later in the year of 1993,  
7 so I don't know, I guess, is the best I can say.

8 Q Okay, fair enough. At the October 6  
9 meeting between the governor and the President, was  
10 there any discussion whatsoever relating to Madison  
11 Guaranty Savings & Loan?

12 A No.

13 Q At the same meeting, was there any  
14 discussion whatsoever pertaining to Whitewater  
15 Development Corporation?

16 A No.

17 Q Was there any discussion whatsoever  
18 pertaining to the Resolution Trust Corporation?

19 A No.

20 Q Was there any discussion whatsoever  
21 relating to criminal referrals?

22 A No.

1 Q Was there any discussion pertaining to  
2 criminal matters related to the governor?

3 A No.

4 Q Did there ever come a time when you  
5 personally became aware that the Resolution Trust  
6 Corporation had prepared criminal referrals  
7 pertaining to Madison and Whitewater and Jim Guy  
8 Tucker?

9 A No, other than what I saw in the newspaper.

10 Q But there did come a time when you were  
11 made aware of this? I'm not asking you where the  
12 information came from.

13 A No. I mean, I've read the press accounts  
14 about the Whitewater issue. I have not ever had any  
15 other knowledge other than what I've read in the  
16 press.

17 Q Yeah, I was just asking you if you --

18 A No.

19 Q -- had learned about it at all, and that's  
20 true, but from the press?

21 A Yeah, all of my information with respect to  
22 that has been from the press.

1 Q When you were in the presence of the  
2 governor and Mack McLarty, was there any discussion  
3 about Madison Guaranty?

4 A No.

5 Q How about the Resolution Trust Corporation?

6 A No.

7 Q Criminal referrals?

8 A No.

9 Q Whitewater?

10 A No.

11 Q Do you know if there was any discussion  
12 about any of those matters when you left the presence  
13 of Mr. McLarty and the governor?

14 A I am not aware of any discussion, but I was  
15 not in the presence of them during that few minutes.  
16 But in subsequent meetings with Mr. McLarty about a  
17 number of other things, I never heard him bring it  
18 up.

19 Q Can you tell me again who was with  
20 Mr. McLarty and the governor when you left to go talk  
21 to the President?

22 A I don't know. It may have -- Bill Burton



1 may have been in there or he may not have been. I  
2 just don't know if there was another staff person.  
3 Or it may have been another person on his staff --  
4 Mark Middleton would be a typical person that would  
5 be in there -- but I don't recall if there was  
6 anybody else in there.

7 Q Is it possible that there were just the two  
8 of them, Mr. McLarty and the governor, for some  
9 period of time, that they were alone?

10 A I just don't know if there was someone else  
11 in there with them or if they were alone. I just  
12 cannot recall that piece of it.

13 Q So you have no firm recollection of someone  
14 else being there?

15 A That's correct.

16 Q I just want to ask you again, you were in  
17 the Oval Office with the President and the governor  
18 the whole time that they had their conversation?

19 A Yes.

20 Q So there was never a time that the two of  
21 them were alone?

22 A That is correct, they were never outside of

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1 my presence.

2 Q Because you were there when the governor  
3 arrived in the Oval Office?

4 A And I was there when he left.

5 MR. BARTOLOMUCCI: That's all I have for  
6 you.

7 THE WITNESS: Okay.

8 EXAMINATION

9 BY MR. IVEY:

10 Q Good afternoon. I just wanted to show you  
11 a letter that's Bates stamped SZ 122, from Lloyd  
12 Cutler to Henry Gonzalez, dated July 27, 1994. I  
13 wanted you to take a look at that.

14 (Witness reviewed the document.)

15 A Okay.

16 Q Now, I take it from the testimony you just  
17 gave that Mr. Cutler's letter is correct when it says  
18 Mr. Keith Mason was present for the entire meeting?

19 A That is correct.

20 Q He has confirmed that the subjects of  
21 Whitewater, RTC criminal referrals or Madison  
22 Guaranty were never discussed. Is that correct, too?

1 A Yes.

2 Q It mentions here your notes and that he  
3 finds no mention of anything even remotely related to  
4 the RTC investigation. You've had a chance to review  
5 your own notes as well?

6 A Yes, I have.

7 Q Was there anything in your notes that  
8 mentioned Whitewater, the criminal referrals or  
9 Madison Guaranty?

10 A There was not anything in my notes that  
11 referred to those issues.

12 MR. IVEY: I have no further questions.

13 EXAMINATION

14 BY MR. BARTOLOMUCCI:

15 Q Was there anything in your notes that  
16 related to any criminal matters in connection with  
17 Governor Tucker?

18 A No.

19 Q Reading from that same letter, I note it  
20 does say that "according to Mr. Mason's recollection  
21 of the meeting and his notes, in addition to the  
22 defense facility, Governor Tucker also raised issues

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1 related to Medicaid funding and FDA research  
2 facility, interstate highway financing, National  
3 Guard cutbacks and NAFTA"; is that correct?

4 MR. ADAMSON: You can answer that.

5 THE WITNESS: Repeat the question again, I  
6 apologize.

7 BY MR. BARTOLOMUCCI:

8 Q It says "according to Mr. Mason's  
9 recollection of the meeting in his notes, in addition  
10 to the defense facility, Governor Tucker also raised  
11 issues related to Medicaid funding, FDA research  
12 facility, interstate highway financing, National  
13 Guard cutbacks and NAFTA."

14 A Yes, I recall all those issues being  
15 mentioned.

16 Q Were those the only issues that were  
17 discussed?

18 A There's so many of them. I've got to --

19 Q To the best of your memory, were those the  
20 topics that were discussed?

21 A Yeah, those were the main topics.

22 Q Were there minor topics?

1 A General --

2 MR. ADAMSON: Let's stay to the generic to  
3 keep faithful to the privilege which has been  
4 asserted by the White House.

5 MR. BARTOLOMUCCI: Well, obviously this  
6 can't be privileged because I have it, and I think we  
7 can discuss it at the level of generality at which  
8 it's being discussed here.

9 MR. ADAMSON: Right. And that's the  
10 caution I was giving the witness to stay at the  
11 generic as opposed to the specifics of the  
12 conversation.

13 THE WITNESS: I don't recall any other  
14 issues like that that were discussed. I mean, as I  
15 say, they had known -- had served together in  
16 Arkansas, the governor had had recent surgery, there  
17 was various exchanges about -- at least at the front  
18 end of the meeting about the personal --

19 BY MR. BARTOLOMUCCI:

20 Q Some pleasantries?

21 A Pleasantries, correct.

22 Q And then they went on to discuss these

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1 issues?

2 A Right.

3 Q And to the best of your memory, these were  
4 the only major issues that were discussed?

5 A Right, right. And there may have been more  
6 details about each of those issues that were  
7 discussed, but those were the broad subject matters  
8 that they discussed.

9 Q The pleasantries did not get into how the  
10 governor was doing in terms of any sort of government  
11 investigation of him?

12 A There was no discussion of any  
13 investigations.

14 MR. BARTOLOMUCCI: I think that will do  
15 it.

16 THE WITNESS: Thanks.

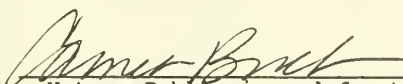
17 (Whereupon, at 4:52 p.m., the deposition  
18 was concluded.)  
19  
20

21 -----  
22 KEITH WAYNE MASON

CERTIFICATE OF NOTARY PUBLIC & REPORTER

55

I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires MARCH 14, 1998

DEPONENT Keith Mason

## ERRATA

| <u>PAGE</u> | <u>LINE</u> | <u>CHANGE FROM</u>   | <u>CHANGE TO</u> | <u>REASON</u> |
|-------------|-------------|----------------------|------------------|---------------|
| 10          | 5           | Delete date of birth |                  |               |
| 11          | 13          | I                    | He               |               |
| 11          | 17          | Marsha               | Marcia           |               |
| 12          | 16          | and                  | in               |               |
| 18          | 2           | Marsha               | Marcia           |               |
| 18          | 4           | Marsha               | Marcia           |               |
| 18          | 5           | "for"                | "because of"     |               |
| 18          | 17          | Marsha               | Marcia           |               |
| 19          | 5           | Marsha               | Marcia           |               |
| 19          | 7           | Marsha               | Marcia           |               |
| 19          | 9           | Marsha               | Marcia           |               |
| 19          | 14          | Marsha               | Marcia           |               |
| 20          | 4           | "and"                | "in"             |               |
| 20          | 11          | Marsha               | Marcia           |               |
| 20          | 15          | Marsha               | Marcia           |               |
| 24          | 20          | "no"                 | "low"            |               |
| 28          | 22          | "of"                 | "or"             |               |
| 29          | 10          | "talks"              | "talked"         |               |



DEPONENT Keith Mason

## ERRATA

[illegible]



**DEPOSITION OF JOHN J. ADAIR  
IN RE: S. RES. 120**

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**THURSDAY, OCTOBER 26, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of JOHN J. ADAIR, called for examination pursuant to notice of deposition, at 9:40 a.m. in Room 534 of the Dirksen Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

FRED W. GIBSON, JR., Esq.  
Office of Inspector General  
Resolution Trust Corporation  
1735 North Lynn Street  
Room 1132  
Rosslyn, Virginia 22209  
On behalf of the Deponent.

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## P R O C E E D I N G S

Whereupon,

JOHN J. ADAIR

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MR. O'CALLAGHAN:

Q This deposition is conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance Authority and other related matters.

Section (1)(b)(2)(e) of Senate Resolution 120 authorizes investigation and public hearings into whether the report issued by the Office of Government Ethics on July 31st, 1994 or related transcripts of deposition testimony, one, were improperly released to White House officials or others prior to their testimony before the Committee on Banking, Housing

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and Urban Affairs pursuant to Senate Resolution 229 or, secondly, were used to communicate to White House officials or to others confidential RTC information relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation.

This will be the focus, the main focus of today's deposition. We may venture into other questions that deal with other aspects of the resolution as well.

Do you recall when you were first notified that you were being asked to testify today?

A Yes. Let's see. It was Friday, I believe.

MR. GIBSON: October 6th.

THE WITNESS: October 6th.

BY MR. O'CALLAGHAN:

Q This deposition is being conducted in advance of public hearing which is most likely happen in November. And there's a chance that you'll be asked to testify at those hearings as well. Today, Mr. Portnoy and I are going to ask you a series of questions. You are testifying under oath.

A Right.



1 Q If you don't understand a question, let me  
2 or Mr. Portnoy know and we'll rephrase the question  
3 for you. If anyone needs to take a break, just let  
4 us know. We are pretty amenable to those requests.  
5 The stenographer will prepare a record of questions  
6 and answers. The deposition will be treated as  
7 committee confidential until the commencement of the  
8 hearings, and we request that you treat the  
9 information from the deposition in the same manner.

10 Prior to the hearings, you will receive a  
11 letter from the Committee telling you that you may  
12 come to the Senate to review the transcript of your  
13 deposition, make any corrections or any changes on  
14 the errata sheet. You may be represented by  
15 counsel. Are you represented by counsel today?

16 A Yes.

17 MR. O'CALLAGHAN: Counsel, please state  
18 your name.

19 MR. GIBSON: Yes, my name is Fred Gibson.  
20 I'm a senior attorney with the RTC Office of  
21 Inspector General.

22 BY MR. O'CALLAGHAN:

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1 Q Okay. And with regard to ground rules  
2 today, objections to the form of questions will be  
3 noted for the record. Counsel may object on the  
4 grounds of privilege or relevance. The Committee  
5 Chairman may rule on objections where the witness  
6 refuses to answer a question.

7 Could you please state and spell your full  
8 name for the record.

9 A John J. Adair, A-d-a-i-r.

10 Q Do you have any nicknames?

11 A Jack.  
12  
13

14 Q What is your present business address?

15 A 1735 North Lynn Street, Rosslyn, Virginia  
16 22209.

17 Q And where are you currently employed?

18 A With the Resolution Trust Corporation as  
19 the Inspector General.

20 Q Can you give me a brief description of your  
21 employment history since you graduated from college?

22 A Most of my career has been with the U.S.

1 General Accounting Office which I joined in February  
2 1964, and I was with them approximately 25 years.  
3 And then in April of 1990, I became the Inspector  
4 General at the Resolution Trust Corporation, so I've  
5 been with them approximately 5-1/2 years. And I did  
6 have one year in 1974 where I was a legislative  
7 assistant to Senator Peter H. Dominick of Colorado.

8 Q And what positions did you hold at GAO?

9 A Auditor, audit manager and ultimately  
10 becoming a member of the senior executive service at  
11 GAO with the title of director of fraud prevention  
12 and audit oversight.

13 Q Was that the last title you held at General  
14 Accounting Office?

15 A I believe that was it, yes.

16 Q During the period March through August  
17 1994, were you Inspector General at the RTC?

18 A Yes.

19 Q Are you aware of the Committee's request --  
20 excuse me -- the Committee's document request that  
21 was made to the Office of Inspector General at the  
22 Resolution Trust Corporation?

1 A Yes.

2 Q Did you conduct a search for responsive  
3 documents, notes, or reports or memoranda?

4 A Yes.

5 Q Have all those responsive documents been  
6 produced?

7 A Yes, to my knowledge, they have. Yes.

8 Q Were there any documents that existed at a  
9 prior time that has since been responsive to the  
10 request that has since been lost, destroyed or  
11 otherwise disposed of?

12 A Not to my knowledge.

13 Q Have you spoken with anyone other than your  
14 counsel prior to the deposition with regard to the  
15 deposition?

16 A Only to ask those who have been through the  
17 deposition how long they were up here, how many hours  
18 they spent. But not the substance of their  
19 depositions.

20 Q Any other discussions?

21 A Just with counsel.

22 Q Did you engage in any preparation for the

1 deposition for --

2 A Yes. On the day which I guess was, you say  
3 was October 6th, Friday, when we received notice,  
4 there was a general meeting of the people who were  
5 going to be deposed sort of as to refresh our  
6 memories of what had happened a year or so  
7 previously, and to get the ground rules as we  
8 understood for the deposition.

9 Q How many people got together for this  
10 meeting?

11 A Let's see. It would have been myself, and  
12 my deputy Steve Switzer, counsel Patricia Black,  
13 Clark Blight, the assistant Inspector General for  
14 investigation, and I believe the two women who  
15 conducted the interviews during the investigation in  
16 question. And I believe our counsel was there also.  
17 Is there anyone else that I'm missing?

18 MR. GIBSON: I don't think so.

19 THE WITNESS: I think that's everyone.

20 BY MR. O'CALLAGHAN:

21 Q As Inspector General for the Resolution  
22 Trust Corporation, who do you report to?

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10

1 A Under the legislation that created  
2 Resolution Trust Corporation, as amended, I report to  
3 two people. And first of all, the CEO of the  
4 Resolution Trust Corporation and that, at this  
5 moment, in an acting capacity is Jack Ryan. And  
6 secondly, the head of the thrift deposit or  
7 protection oversight board, who is the Secretary of  
8 the Treasury so right now that's Mr. Rubin. It's  
9 been different people at different times in the last  
10 5-1/2 years.

11 Q And who reports directly to you?

12 A Basically my executives. There are six of  
13 them. The assistant Inspector General for audit and  
14 investigation, my counsel, my deputy and two other  
15 executives, one of whom handles our budget and  
16 administrative matters and the other who handles  
17 audit oversight matters involving CPA audits that are  
18 contracted for by the RTC. He's a quality assurance  
19 person. Those six basically.

20 Q Okay. During the period March through  
21 August of 1994, who was the CEO of RTC?

22 A In that period, it would have been Jack

1 Ryan would have been the acting CEO.

2 Q And how about the Secretary of the  
3 Treasury?

4 A That would be Lloyd Bentsen at that point.

5 Q Okay. And you just mentioned people that  
6 report to you in different positions. If you could  
7 tell me who the people were during that time period  
8 in those positions that were reporting to you.

9 A Okay. The deputy would be Steve Switzer.  
10 Counsel, Patricia Black. The assistant Inspector  
11 General for audit would be Sharon Vander Venet. The  
12 assistant Inspector General for investigation, Clark  
13 Blight. The assistant Inspector General for quality  
14 assurance is Bob McGregor. And the assistant  
15 Inspector General for budget and administrative  
16 matters is Rex Simmons.

17 Q Is there a mechanism in place that assures  
18 that the Inspector General's office maintains its  
19 independence from the main Resolution Trust  
20 Corporation?

21 A I guess there are several mechanisms, one  
22 of which is the Inspector General can only be removed

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1 by the President of the United States and another is  
2 that the Inspector General has its own -- the Office  
3 of the Inspector General has its own appropriation  
4 from the Congress. So we control our own money and  
5 we cannot be removed by someone in RTC, it has to be  
6 the President of the United States. And we also  
7 control our own space, we pay rent for our own space  
8 where we're located. We've tried to make ourselves  
9 as independent as we possibly can.

10 Q Are you located in a different location  
11 than the main Resolution Trust Corporation?

12 A Well, the main Resolution Trust Corporation  
13 office is 801 17th Street, Northwest in Washington.  
14 And we are in Rosslyn for the most part, although we  
15 do have some staff located in Washington basically  
16 across the street and up the block from the main  
17 building, but we are in a separate location. There  
18 are Resolution Trust Corporation people in the  
19 building that we are in in Rosslyn, but we have the  
20 entire 10th floor to ourselves in a secured area.

21 Q Okay. During the period March through  
22 August 1994, was Mr. Ryan the sole CEO?

1 A Yes.

2 Q The CEO of the Resolution Trust Company, is  
3 he normally kept advised of ongoing investigations?

4 A Well, let's see. On the audit side, we  
5 send him all draft audit reports and all final audit  
6 reports. And on the investigative side, he gets  
7 briefings on investigations as he requests them, and  
8 gets copies of finished investigative reports as  
9 appropriate. A lot of times they don't rise to his  
10 level and so he doesn't get them. So it's sort of on  
11 a case-by-case basis.

12 Q During the time period March through August  
13 1994, did you receive a request that the RTC  
14 Inspector General's office participate in conducting  
15 an investigation to aid the Office of Government  
16 Ethics in conducting an analysis of White  
17 House-Treasury contacts?

18 A Yes.

19 Q And when did you receive that request?

20 A I believe we received that request the  
21 first day of June -- I'm sorry, first day of July is  
22 my recollection. And there should be a letter or a

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14

1 memo that was sent to me from Mr. Ryan asking that we  
2 assist the Treasury Inspector General and which in  
3 turn was working for the Office of Government Ethics  
4 in conducting an investigation.

5 Q Had you been told any time in March that  
6 your office might be asked to --

7 A Yes.

8 Q -- be involved?

9 A Yes, we had met with in fact the  
10 representatives of the Office of Government Ethics, I  
11 believe that was in the March time frame, with the  
12 understanding that when the independent counsel  
13 finished his work, that the Office of Government  
14 Ethics would be taking over and doing the  
15 investigation through the two Inspectors General at  
16 Treasury and RTC. So we were prepared as soon as we  
17 received word to begin that investigation.

18 Q And during that meeting you had with the  
19 OGE in March, did the officials from the OGE define  
20 what role they expected the two Inspectors General to  
21 play in the investigation?

22 A I believe they did in the sense that they



1 indicated that they did not, OGE, have investigative  
2 capability, and therefore would be relying upon the  
3 two Inspectors General to conduct interviews at  
4 Treasury and RTC and the White House and provide the  
5 information that we had gathered to government ethics  
6 office for its determination as to whether there had  
7 been a problem.

8 Q Okay. And were there any discussions of  
9 the scope or timing of the investigation at that  
10 time?

11 A I think to my recollection it was a case of  
12 when the prosecutor finishes, we would like the IGs  
13 to immediately begin their investigation and provide  
14 us with the results. I'm not sure there was a time  
15 frame necessarily associated at that point although I  
16 know that the at some point it was made known that  
17 the Secretary of the Treasury wanted the Office of  
18 Government Ethics to have this work completed and an  
19 opinion on work prior to Congressional hearings which  
20 were scheduled and -- so that Secretary of the  
21 Treasury could take any action that he deemed  
22 appropriate regarding the people who were being

1 investigated.

2 Q During this meeting, do you have any  
3 discussions about which person's conduct might be the  
4 subject of the investigation?

5 A I'm not really remembering whether that  
6 came up at that particular meeting, but I think it  
7 had already been established that Mr. Altman and  
8 Ms. Hanson would certainly be part of the focus of  
9 the work because of Mr. Altman's statement at a  
10 hearing in February, I believe, that he had had a  
11 contact with the White House on Madison matters and  
12 Ms. Hanson had been with him at that meeting.

13 Q Okay. And who is Ms. Hanson?

14 A She was the general counsel at the  
15 Department of the Treasury.

16 Q March of 1994, did you have an  
17 understanding as to why Secretary Bentsen asked the  
18 Office of Government Ethics to provide Treasury with  
19 an analysis with regard to the White House-Treasury  
20 contacts in question?

21 A My understanding was that the independent  
22 counsel was look at this from a criminal standpoint,

1 and that the Secretary of the Treasury wanted OGE to  
2 look at it to see if any ethics rules had been  
3 violated by anybody in the Department of the Treasury  
4 in their dealings with the White House and if so, he  
5 would then take appropriate action.

6 Q Did you have an understanding as to why the  
7 Secretary hadn't gone to ask people within Treasury  
8 to conduct an investigation or do a review of the  
9 conduct involved?

10 A My understanding was that he wanted someone  
11 from outside the Department of the Treasury to make  
12 an independent evaluation of the situation and that  
13 was the Office of Government Ethics.

14 Q Did you understand as to why he wanted  
15 someone outside the department to conduct the review  
16 or analysis?

17 A Just the fact that it would appear at least  
18 to be a more independent evaluation if done outside  
19 the Department of the Treasury.

20 Q At the meeting that you had in March with  
21 people from OGE, was it strictly OGE and RTC IG  
22 people there, were there people from other agencies

1 there?

2 A I believe it was just, I believe it was  
3 just OGE and RTC Inspector General people just to  
4 make sure that we were agreeing to provide assistance  
5 to the Treasury IG in this investigation and that we  
6 would be ready to conduct the investigation whenever  
7 the independent counsel gave the word that they were  
8 finished with their work.

9 Q Were you given the impression that one IG's  
10 office would be taking the lead or whether it would  
11 be an equal operation?

12 A The way the request was worded was that we  
13 would be assisting the Treasury IG office. We were  
14 involved, I believe, primarily because there were a  
15 number of RTC people that had to be interviewed as  
16 well as Treasury and White House people. I think we,  
17 even though we were assisting, I think we felt that  
18 we were providing half of the investigative team that  
19 would be involved, and that, you know, we would be  
20 doing presumably about half the work.

21 Q Conducting half the interviews and --

22 A Well, as it worked out we set up two teams

1 of interviewers, and for the most part, one of our  
2 investigators and one of Treasury's IG investigators  
3 would team up for interviews, and then another one of  
4 our investigators and another one of their  
5 investigators would be another team rather than a  
6 team that was consisted of two of our investigators  
7 and two of the Treasury investigators. So that's the  
8 way for the most part that went.

9 Q Okay. I don't want to get too far ahead of  
10 myself here but with regard to having one  
11 investigator from each IG's office perform as a team,  
12 whose idea was that to set that up in that fashion,  
13 if you recall?

14 A I am not sure whether exactly how that was  
15 arrived at. I knew there was some meetings with  
16 Clark Blight and his counterpart at Treasury and it  
17 may have been agreed to in those sessions.

18 Q Agreed to by the people who were running  
19 the investigation?

20 A Yes.

21 Q When was the first time that RTC people,  
22 people from the RTC IG's office had discussions with

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20

1 folks from the Treasury IG's office with regard to I  
2 guess prospective investigation?

3 A There is a chronology. Do we have it with  
4 us that gives the date of that first meeting?

5 Q Do you recall independently?

6 A I'm thinking it's early in July, maybe  
7 around the 3rd of July.

8 Q Did you have any discussions with the  
9 Treasury Inspector General on the phone personally?

10 A Did I?

11 Q Yes.

12 A Yes.

13 Q Before July?

14 A Yes, and in particular very early in June,  
15 there had been a question raised to me by my counsel  
16 Pat Black about the counsel for the Treasury IG. And  
17 there was concern there that her position, which was  
18 really within the Office of the General Counsel even  
19 though she was serving the Treasury IG, was such that  
20 it might give the appearance of a problem to a  
21 neutral observer because the focus of the  
22 investigation would be in part on Jean Hanson, the

1 general counsel.

2         So it was suggested to me that perhaps I  
3 should call the acting IG at Treasury, Bob Cesca, and  
4 see if that were not a problem that he saw that  
5 needed to be addressed and to offer to him the  
6 services of my general counsel, Patricia Black, if he  
7 felt that would be an acceptable solution to what may  
8 have been perceived as a problem. So I did call him  
9 early in June either around the first or second of  
10 June and spoke to him and he indicated that that  
11 arrangement with the counsel being part of the  
12 general counsel's office, the IG's counsel being part  
13 of the general counsel's office had been the way they  
14 had always operated as an IG office. And so he  
15 didn't think that he needed to change that  
16 arrangement at that point.

17         Now, he -- I'm trying to recall whether he  
18 said he had taken action or was going to take action  
19 to alleviate that situation somewhat, because I am  
20 aware that he then entered into an agreement with the  
21 general counsel as to his counsel's role during this  
22 particular investigation, that she would not be, that

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22

1 his counsel would not be permitted to discuss with  
2 anybody in the general counsel's office the  
3 particulars of the investigation and that there would  
4 be some changes in how his counsel was rated, that he  
5 would have input to her rating subsequent to the  
6 investigation.

7         So I believe either as a result of my call  
8 or someone else's call or his own thinking on the  
9 matter, he felt a change in ordinary procedures would  
10 be made but that she would still stay on and work on  
11 this investigation.

12         Q     So during the conversation you had on June  
13 1st or June 2nd he brought up, he mentioned that he  
14 was taking steps to alleviate any problems --

15         A     I'm having difficulty remembering whether  
16 he exactly said that or not, but I know that  
17 subsequently he did take, he did take that action.

18         Q     I'm going to show you a document Bates  
19 stamped 025256 to you and your counsel. Take a  
20 moment to -- actually, before I ask you about that, I  
21 forgot to ask you about your educational history. I  
22 apologize.

1 A Education is a bachelor's degree from  
2 Duquesne University in Pittsburgh and master's degree  
3 from George Washington University here in Washington  
4 with a major in accounting. And I'm a certified  
5 public accountant, so my background is accounting.

6 Q Okay. Thanks.  
7 (Witness reviewed the document.)

8 A Yes, I have seen this and what this memo  
9 appears to be, the action that Mr. Cesca took with  
10 regard to his counsel and how things would be handled  
11 a little differently for this particular  
12 investigation.

13 Q And just for the record, what I showed  
14 Mr. Adair is a June 27th, 1994 memo for Jean Hanson  
15 from Robert Cesca, and the subject is provision of  
16 legal advice and services to OIG. Do you recall when  
17 you first saw this memo, Mr. Adair?

18 A No, not exactly. I don't.

19 Q Do you recall how it was brought to your  
20 attention?

21 A I believe -- no, I really don't recall how  
22 it was brought to my attention.

1 Q Did you see it during this time period?

2 A I believe I did.

3 Q Okay.

4 A I believe I did.

5 MR. PORTNOY: What time period is that?

6 THE WITNESS: Of the investigation between  
7 June and August, is that what we're talking about, I  
8 believe.

9 BY MR. O'CALLAGHAN:

10 Q Yes. Do you recall whether Mr. Cesca told  
11 you he would send you a copy of the memo before you  
12 received it?

13 A I don't recall that.

14 Q Okay. After you viewed the document during  
15 the June-August time period, were you satisfied with  
16 the steps that had been taken or outlined in the  
17 memo?

18 A Well, I was not familiar with the woman who  
19 was the counsel to the office of -- I didn't know --  
20 of the Inspector General. I didn't know the  
21 relationship that she had with the IG. He seemed to  
22 have confidence in her ability to function under this



1 arrangement, and --

2 Q So what was her name?

3 A Francine Kerner. And to me, it didn't seem  
4 to be the best arrangement simply from an appearance  
5 standpoint. People could question the fact that  
6 while we were investigating jointly the actions of  
7 the general counsel of the Department of Treasury,  
8 that a member, that an attorney from the general  
9 counsel's office would be intimately involved in the  
10 details of that investigation and could be then,  
11 concern could have been raised, well, is she in fact  
12 providing information on the investigation back to  
13 the general counsel or members of the Office of the  
14 General Counsel. I think it was just certainly  
15 something that would raise a question based solely  
16 even on appearance's sake.

17 But since the Treasury IG was the lead on  
18 this and we were assisting and we had raised the  
19 concern and Mr. Cesca seemed to think that this was  
20 going to take care of the appearance question, we  
21 determined to continue on with the investigation and  
22 hope for the best.

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26

1 Q Did you ever hear that anyone within  
2 Treasury IG's office had problems with Ms. Kerner  
3 being involved in the investigation?

4 A I think I did hear that some folks were  
5 concerned. I'm not sure at what point that was made  
6 known to me, but I think I did hear that, yes.

7 Q Do you recall who you heard it from?

8 A No. It's more a general sense that someone  
9 brought it to my attention that within the Treasury  
10 IG itself that some folks may have been concerned  
11 about this from an appearance standpoint.

12 Q Was that brought to your attention before  
13 or after you made the call to Mr. Cesca in early  
14 June?

15 A I'm not sure. I'm not sure exactly when  
16 that was brought to my attention.

17 Q Do you recall if during a conversation with  
18 Mr. Cesca you brought up the fact that you had heard  
19 that people in his own office had concerns about it?

20 A I don't remember if I said that.

21 Q Did Mr. Switzer ever express concerns to  
22 you about Ms. Kerner's role?

1 A Well, yes. I think Mr. Switzer and counsel  
2 Patricia Black and assistant IG Clark Blight, I think  
3 all of us were somewhat concerned at this  
4 arrangement, you know, that this could be a problem.

5 Q Are you aware of anyone else who expressed  
6 a problem with the arrangement with Ms. Kerner being  
7 involved with the investigation?

8 A I believe my counsel Patricia Black  
9 indicated that in her discussions with OGE,  
10 government ethics, that they also had a concern about  
11 this arrangement and that they also may have called  
12 or were planning to call Mr. Cesca and ask him if  
13 there could be something done about that particular  
14 arrangement.

15 Q So as far as you know, there are people  
16 from RTC IG's office who had problems with it.  
17 People from RTC IG, Treasury IG and people from OGE  
18 also had problems with it?

19 A Yes.

20 Q The problem was that -- let me withdraw  
21 that question.

22 Did you have discussions with anyone from

1 OGE with regard to Ms. Kerner's participation in the  
2 investigation?

3 A I personally did not, but as I said, I know  
4 my counsel advised me that she had had these  
5 discussions, and that OGE had concerns about it, the  
6 arrangement.

7 MR. PORTNOY: Can you establish a time  
8 frame for those concerns, or would you rather I do  
9 this on subsequent questioning?

10 MR. O'CALLAGHAN: Well, I think we  
11 established we're talking about the time frame June  
12 through August of '94.

13 MR. PORTNOY: It would be significant  
14 whether those concerns were expressed prior to this  
15 memorandum being drafted or after.

16 BY MR. O'CALLAGHAN:

17 Q How about March through August of '94?

18 A The concerns of OGE?

19 MR. PORTNOY: That's correct.

20 THE WITNESS: In our chronology which I  
21 should have brought, I know there were some meetings  
22 between my counsel and Office of Government Ethics

1 people prior to the June, beginning of June. I  
2 believe that may have been when these concerns were  
3 discussed, but I suppose I should defer to my counsel  
4 and to whatever statement she may have already made  
5 on this. My belief and understanding is that my  
6 counsel had spoken to OGE sometime between the March  
7 and June 1st time frame, and that -- and then my call  
8 was made early in June and that that memorandum  
9 obviously is dated toward the latter part of June.

10 BY MR. O'CALLAGHAN:

11 Q So the concerns expressed by OGE were  
12 brought up in the March meeting?

13 A Somewhere between the March -- not that  
14 first -- I don't recall it was brought up in the  
15 March meeting that I attended, but I believe it was  
16 in a subsequent meeting that my counsel may have had  
17 with Office of Government Ethics.

18 Q The way you heard about it was through your  
19 counsel Pat Black?

20 A Yes. I believe that's what led to her  
21 asking me if I would call Bob Cesca and see if we  
22 couldn't come to a different arrangement or where my

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1 counsel would serve Bob Cesca and would serve as  
2 counsel for the entire investigation and ask Francine  
3 to step aside with this particular investigation.

4 Q After you received the June 27th  
5 memorandum, which I just showed you, did you express  
6 to Mr. Cesca any opinion as to whether this memo took  
7 care of the problems that you perceived with  
8 Ms. Kerner's involvement in the investigation?

9 A I don't recall that I did. I don't think  
10 so.

11 Q Okay. You still had misgivings; correct?

12 A Yes. I mean, at a minimum from an  
13 appearance standpoint her being involved in the  
14 investigation simply wouldn't look particularly  
15 appropriate to anyone looking at it from the outside.

16 Q Okay. Thanks.

17 A But as he had told me that this is the way  
18 they've always operated and he didn't intend to  
19 change except with that modification and the fact  
20 that they had the lead on this and that he knew her  
21 and he worked with her and apparently trusted her to  
22 conduct herself in an appropriate manner. I went

1 with his judgment on this at that point.

2 Q Okay. Do you recall the first formal  
3 meeting you had with people from Treasury IG's  
4 office?

5 A That I was involved in? It would have been  
6 I believe the 5th of July.

7 Q Was this after you had been given the  
8 go-ahead by Mr. Fiske to --

9 A Yes, we had been given the go-ahead I  
10 believe June 30th and I believe a July 1st letter  
11 came in from Mr. Ryan asking us to help the Treasury  
12 IG. And then I think we had the Fourth of July  
13 weekend or whatever that was, and then on the 5th, we  
14 had our meeting at the Treasury Department to sort of  
15 kick this investigation off.

16 Q And who attended that meeting?

17 A Well, let's see, I was there, my deputy,  
18 Steve Switzer, my counsel, Patricia Black. I believe  
19 Clark Blight was there from our side. And then from  
20 their side, Bob Cesca, Francine Kerner and I believe  
21 Jim Cottos, who was Clark Blight's counterpart on the  
22 investigative side. And I'm not sure exactly who --

1 there may have been a few other people there as  
2 well. They're slipping my memory at the moment.

3 Q And to the best you can recall, what were  
4 the, what was the substance of the meeting, what  
5 discussions were held?

6 A We wanted to determine things like the time  
7 frames for the investigation and who should be  
8 interviewed and who would make the arrangements for  
9 the interviews of Treasury people and the RTC people  
10 and the White House people, basically what that was  
11 about. Also, some questions about getting documents  
12 from the White House and I believe Treasury folks  
13 that would impact on the investigation.

14 Q Starting with that, what were the  
15 discussions involving getting documents from the  
16 White House and Treasury?

17 MR. PORTNOY: What's the relevance to the  
18 resolution, Mike?

19 MR. O'CALLAGHAN: Okay. The relevance of  
20 the resolution, Jim, is to establish, to find out  
21 what mechanisms was put together and who had contacts  
22 with the White House and the Treasury with regard to

1 the investigation information that was reviewed  
2 during the investigation including people involved  
3 with what access to the transcripts.

4 MR. PORTNOY: But there is no allegation  
5 anywhere in this matter or no issue raised, as I  
6 understand it, in the resolution concerning the  
7 transmittal of documents from the White House or the  
8 Treasury to the Inspectors General. So I would just  
9 ask that, rather than going into a long inquiry into  
10 that process, we stick with the issue of who might  
11 have had contact.

12 MR. O'CALLAGHAN: Who might have had  
13 contact with, in connection with getting documents  
14 from those two agencies or the White House and the  
15 Treasury.

16 MR. PORTNOY: The identity of individuals  
17 who may have had contact with the White House and  
18 Treasury is, I suppose, tangentially relevant, but  
19 the process of document production from the White  
20 House or Treasury to the Inspector General's office  
21 is way off to the side.

22 MR. O'CALLAGHAN: In order to understand

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1 the process of how it was done, you have to know who  
2 was involved in the process. Do you agree with that,  
3 yes or no?

4 MR. PORTNOY: How what was done?

5 MR. O'CALLAGHAN: How the document  
6 production was done.

7 MR. PORTNOY: The document production is  
8 not at issue here.

9 MR. O'CALLAGHAN: What was your objection?

10 MR. PORTNOY: My objection is that the  
11 document production is not at issue here. That's  
12 precisely the point, but go ahead and ask your  
13 question.

14 BY MR. O'CALLAGHAN:

15 Q I was attempting to ask you about  
16 discussions that evolved in the meeting with regard  
17 to getting documents from the White House and the  
18 Treasury.

19 A Right. Okay. We had written a joint memo  
20 on July 1st signed by Bob Cesca and my deputy, Steve  
21 Switzer, because I was out of the office July 1st, to  
22 Lloyd Cutler asking for documents relevant to the



1 investigation which I believe had already been  
2 provided to the Hill. And Francine Kerner had been  
3 in contact with representatives at the White House  
4 regarding production of those documents is my  
5 recollection. So that was discussed.

6 Q That she had been in contact?

7 A With, I believe, Jane Sherburne and another  
8 woman working for Lloyd Cutler.

9 Q Was this previous to the July 5th meeting  
10 she'd been in contact with him?

11 A Yes, yes.

12 Q Have you ever learned what the contents of  
13 the discussions between Ms. Kerner and Ms. Sherburne  
14 and the other woman at the White House were?

15 MR. PORTNOY: Regarding transmittal of  
16 White House documents?

17 THE WITNESS: Regarding the documents or  
18 regarding everything.

19 BY MR. O'CALLAGHAN:

20 Q Regarding White House documents.

21 MR. PORTNOY: Again, I'm going to object.  
22 What is the possible relevance?

1 MR. O'CALLAGHAN: Please answer.

2 MR. PORTNOY: Wait, I'd like to make my  
3 point on the record. The transmittal of White House  
4 documents to the Inspectors General is completely  
5 outside the scope of the resolution. If you want to  
6 ask who was involved in contacts, that's fine, but  
7 the contacts regarding transmittal of White House  
8 documents to the Treasury has no bearing whatsoever  
9 on the issues that are addressed in the resolution.

10 MR. O'CALLAGHAN: Okay. Maybe I can solve  
11 your problems, Mr. Portnoy.

12 BY MR. O'CALLAGHAN:

13 Q If you can just, did you ever become aware  
14 of what the contents of the discussions were between  
15 Ms. Kerner and Ms. Sherburne and the other woman at  
16 the White House?

17 A Yes.

18 Q Including any discussions that involved  
19 possible arrangements with regard to transfer of  
20 information between the White House and the IG's  
21 office during the investigation?

22 A Yes, and in addition to the aforementioned

1 discussion regarding documents that would be made  
2 available, there was discussion about the conduct of  
3 the interviews of the White House personnel, and  
4 apparently the White House had agreed that it would  
5 make its personnel available for interview. They had  
6 asked, however, that White House attorneys or an  
7 attorney or attorneys be permitted to sit in on those  
8 interviews.

9 And secondly, that they'd asked that  
10 transcripts of the -- or copies of the interviews  
11 that were conducted of Treasury and RTC people,  
12 they'd asked that those be provided to the White  
13 House. So those two requests that were tied into the  
14 making available of the White House people to be  
15 interviewed. And I remember that we, the RTC folks,  
16 objected to that kind of an arrangement saying that  
17 we didn't think it would be appropriate for the  
18 RTC -- excuse me -- for the White House attorneys to  
19 sit in on these interviews other than the personal  
20 attorney of the person being interviewed which my  
21 understanding is always permissible.

22 And we didn't think it was appropriate to

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1 provide the transcripts or copies of interviews  
2 during the course of the investigation because that  
3 is not something that is normally done in any  
4 investigation that we were aware of. So we objected  
5 to that, to both of those provisions.

6 Q How was that presented during the meeting?

7 A Well, we just that said we didn't think  
8 that arrangement would be appropriate and it needed  
9 to be discussed further between our offices and the  
10 White House with the hope that they, White House,  
11 would agree to still make these people available for  
12 interviews without these other stipulations so --  
13 that they would get transcripts and they would be  
14 able to sit in on the interviews.

15 Q Did anyone express the view that they  
16 thought it would be a good idea for White House  
17 personnel to sit in on the interviews is the first  
18 question?

19 A No, not that I recall. No one said that  
20 would be a good idea that I recall.

21 Q And how about providing copies of the  
22 transcripts?

1       A    I don't recall that anyone thought that was  
2 a particularly good idea, certainly not from the RTC  
3 office. And as I recall, what was agreed to was that  
4 we would have our counsels, Patricia Black and  
5 Francine Kerner, meet with Mr. Cutler's  
6 representatives, Jane Sherburne and there may have  
7 been another woman counsel whose name escapes me, to  
8 sort of try and reach an agreement that we would be  
9 able to conduct the interviews without having to  
10 provide transcripts or have White House attorneys  
11 sitting in on the meetings, and there was a NAFTA  
12 meeting later in the day between those people,  
13 Francine Kerner and Patricia Black and Jane Sherburne  
14 and I believe one other woman from the White House  
15 staff to discuss those issues.

16       Q    And were you ever made aware of what was  
17 discussed in the meeting?

18       A    Yes, and my counsel advised me then I  
19 believe the next day that she had objected to the  
20 requests of the White House with transcripts and to  
21 sit in on the meetings. She said she objected  
22 strongly to that and that there was indication that I

1 might be called by someone from the White House if,  
2 you know -- in other words, they might go over her  
3 head to me to plead their case in this matter. And  
4 so she wanted to alert me to that.

5       And I believe it was the next day of the  
6 6th that several things happened. We did receive a  
7 letter, I believe, from Lloyd Cutler saying that they  
8 would make the documents available and I never did  
9 receive a phone call from the White House, but I did  
10 note that as the interviews began, and I believe they  
11 began the 7th of July, that the White House did not  
12 sit in on any of the interviews of White House people  
13 and it was my understanding that an agreement had  
14 been reached that White House would make the people  
15 available, we would not have any White House people  
16 sitting in on the interviews and we would not turn  
17 over the transcripts. I thought that the issue had  
18 been resolved.

19       Q    Was there a specific agreement between  
20 anyone involved in the investigation, anyone who  
21 reached an agreement with the White House that you're  
22 aware of?

1 A Was there a specific agreement, you mean  
2 other than --

3 Q There was the meeting with Pat Black and --

4 A Francine and the White House.

5 Q And the White House where Pat Black made it  
6 known that she objected to the people sitting in also  
7 to the release of the transcripts?

8 A Right.

9 Q Was there any subsequent conversations  
10 where those issues were resolved?

11 A I thought they had been resolved at that  
12 meeting in the sense that we didn't have a request  
13 for further meetings. We had made our objection  
14 known. They had, next day, written to us in a letter  
15 signed by Lloyd Cutler saying, okay, here are the  
16 documents and then in the interviews that ensued,  
17 there was no attempt by the White House to have their  
18 people sit in on the meetings as they wished. So my  
19 understanding or belief was that this had been  
20 resolved, that the White House had agreed to abide by  
21 the, to our objections -- agreed to our objections  
22 and withdrawn their requests in those two areas.

1 Q And just for clarity, turning to Document  
2 006272, two-page document, on the second page,  
3 006273, for the record, it's a two-page document on  
4 White House stationery dated July 6th addressed to  
5 Robert Cesca and -- Robert P. Cesca and John J.  
6 Adair, and it's signed by -- appears to be signed by  
7 Lloyd Cutler.

8 Is that the letter you are referring to?

9 A Yes. It says I discussed yesterday with  
10 Francine Kerner and Patricia Black that the White  
11 House is providing these documents pursuant to the  
12 following agreements. It lists some things that they  
13 wanted us to do in terms of not making copies and so  
14 forth. So we thought as a result of the meeting that  
15 we now had, we were receiving the documents and we  
16 had taken care of the other concerns about White  
17 House people sitting in on the interviews and  
18 receiving a copy of the transcripts.

19 Q Did the Treasury Inspector General and RTC  
20 Inspector General both receive copies of the  
21 documents from the White House?

22 A Yes, I mean, it's to both of us -- well,

1 I'm sorry. Did we both receive copies of the  
2 documents?

3 Q Correct, yes.

4 A Let's see. My understanding is the  
5 documents may have been produced as a matter of  
6 expediency to the Treasury because they're right next  
7 door and we're in Rosslyn, and then would be made  
8 available to our investigators and Treasury, I  
9 believe. I don't think they sent copies to each of  
10 us, but I couldn't swear to that.

11 Q The Inspector General's office at Treasury?

12 A I believe they sent it to the Inspector  
13 General's office at Treasury and then we were to get  
14 access to them and review them.

15 (Recess.)

16 BY MR. O'CALLAGHAN:

17 Q Mr. Adair, you said you received a  
18 transmittal letter from the White House on July 6th?

19 A Yes.

20 Q Saying that they were going to provide you  
21 with documents?

22 A Yes.

1 Q Did you ever hear that Mr. Cutler made a  
2 request to Mr. Bentsen for copies of the transcripts  
3 in and around that time period?

4 A No.

5 Q Did you ever become aware that copies of  
6 the transcripts were delivered to members of the  
7 general counsel's office at Treasury in July of 1994?

8 A No. I mean, other than when we learned  
9 that they had gone to the White House, are you  
10 referring to that?

11 Q Well, let me -- well, the question is, when  
12 did you learn that copies of the transcripts went to  
13 the White House?

14 A That's the question.

15 Q That's not the question, that's a different  
16 question.

17 A Okay. Sorry.

18 Q I'll ask you that one now.

19 A You want that to be the question?

20 Q Just to get context of the date when you  
21 learned it.

22 A Let's see, July 26th is when we learned



1 that the copies of the transcripts had gone to the  
2 White House.

3 Q And what date did the copies of the  
4 transcripts go to the White House, as far as you  
5 know?

6 A My understanding is that they went July  
7 23rd, which would be a Saturday. We had a meeting on  
8 July 26th at my office in Rosslyn with the Treasury  
9 IG and his folks, and he advised us pretty much at  
10 the opening that over the weekend he had received a  
11 phone call, I think it was Saturday night, that  
12 said -- I believe it was from Ed Knight. He said it  
13 was from Ed Knight saying that the Secretary Bentsen  
14 wanted to send the transcripts to Mr. Cutler, but  
15 wanted to make sure that it was all right with the  
16 Inspector General. And Mr. Cesca, I believe, said he  
17 contacted his counsel, Francine, and they agreed that  
18 it would be all right to do that so the documents had  
19 been sent over the 23rd is what he advised us.

20 Q What was your reaction to that?

21 A I guess I was very surprised, somewhat  
22 stunned, in fact. I had just got -- I had been out

1 of the office the day before on Monday, which  
2 happened to be not only my birthday but my 30th  
3 wedding anniversary. And so I was just getting  
4 back --

5 Q Congratulations --

6 A -- from a long weekend, so it was the first  
7 thing I heard. And I was trying to understand the  
8 implications of all of this and thinking about how  
9 this would be perceived by, you know, by the  
10 Congress, by the newspapers and so forth. And of  
11 course, this was also the beginning of the hearings  
12 on the House side and we had set up a television set  
13 in my conference room so we could work and keep an  
14 eye on what was going on with regard to the  
15 hearings.

16 But I know we were all very much surprised  
17 and I believe my counsel asked Bob Cesca did she hear  
18 him right that the transcripts had in fact gone to  
19 the White House because it would have been all of our  
20 understanding that that was not going to happen until  
21 the investigation was completed, the report had been  
22 written. And so we were all surprised that he had

1 pretty much unilaterally decided that the transcripts  
2 could go over. Probably within the next 20 to 30  
3 minutes or maybe within the hour, as we were watching  
4 the hearings, Mr. Cutler made it known to the  
5 Committee that he had in fact received the  
6 transcripts. So it was certainly not anything they  
7 were keeping secret. They readily admitted they had  
8 received the transcripts in preparation for their  
9 appearance at the hearing.

10 So we were very much surprised, but we were  
11 very close to finishing and issuing a report which we  
12 had a deadline to issue it by the end of that week.  
13 And so we simply continued on with our work and were  
14 very pleased to see when the newspapers did report it  
15 that it was reported as something that the Treasury  
16 IG had done, without any mention that we were in any  
17 way involved because we certainly didn't think that  
18 was appropriate and we didn't want to be a part of  
19 it.

20 Q If I could ask, why didn't you think it was  
21 appropriate?

22 A Well, I guess, as I mentioned, it's just

1 something that is not done in the course of ordering  
2 an investigation, to turn over transcripts -- it's  
3 not something that we or I think any other IG would  
4 normally do. We wanted to do this investigation by  
5 the book, and do it appropriately so that it would  
6 not be subject to questioning by others, and we  
7 thought we had reached that agreement. That was  
8 basically our concern was that the investigation be  
9 done in accordance with the book and that was simply  
10 something that was outside the normal operations.

11 Secondly, we had not had an opportunity to  
12 go through and redact anything that needed to be  
13 redacted in the materials in the transcripts, so  
14 which I don't think had really even occurred to  
15 Mr. Cesca at that point that maybe there was  
16 something that had to be redacted, at least he didn't  
17 indicate it.

18 Q So he considered that?

19 A I don't think he considered it. In fact,  
20 in a later meeting I think he indicated, well, that  
21 really had not occurred to him, that he should check  
22 with us to see if there was any reason that we

1 shouldn't turn the transcripts over. I got E-mails  
2 and phone calls that day from RTC people,  
3 particularly Ellen Kulka called and I believe  
4 Mr. Cutler had mentioned her transcript as part of  
5 his testimony. She was very upset that he somehow  
6 had gotten access to her transcript and she brought  
7 up the issue of redactions and wanted to know if they  
8 had already been redacted and I said no, they had  
9 not. And she wanted to meet with Mr. Cesca and  
10 Treasury folks, and I said I would arrange for such a  
11 meeting.

12 Q I'm sorry. And who is Ms. Kulka?

13 A She was the general counsel at the RTC at  
14 the time. She's since resigned, but I told her that  
15 our office had nothing to do with turning over the  
16 transcripts to the White House. And she asked if I  
17 could arrange a meeting with the Treasury IG and his  
18 people so that she could express her concerns about  
19 what had happened and what needed to be done, and I  
20 agreed to do that.

21 Q Were you upset with Mr. Cesca for the  
22 release of the transcripts?

1 A I guess I was very much surprised and  
2 stunned that that had happened. I don't know that I  
3 was upset at him in the sense that I didn't know what  
4 pressures he was under from within his organization  
5 and why he had to, why he felt he had to do that.  
6 That this was -- I mean, I wasn't angry with him, if  
7 that's what you are saying. I was just kind of  
8 disappointed that this had happened, particularly  
9 that we hadn't been consulted on the matter.

10 Q Did he give you his reasoning for releasing  
11 the transcripts at the time?

12 A I believe he indicated at the time that  
13 since most of the interviews had been completed and  
14 since the Secretary of the Treasury had discussed  
15 this, it was his understanding with Mr. Cutler and  
16 Mr. Cutler needed transcripts to prepare for his  
17 testimony at the hearing that he had determined that  
18 on his own, that that was okay to give him the  
19 transcript.

20 Q Okay. With regard to the issue of redacted  
21 materials or redacting materials, were the  
22 transcripts redacted at a later time?

1 A Yes.

2 Q And for what purpose and if you could tell  
3 me what was redacted?

4 A Well, Ellen Kulka, as I mentioned, wanted  
5 to meet on this matter, and so she came to my office  
6 and I believe this was the 28th, Thursday the 28th,  
7 which would have been two days later, the morning of  
8 the 28th. And in that meeting were Mr. Cesca and his  
9 counsel, Francine Kerner, Ellen Kulka and two or  
10 three of her people and myself and my counsel,  
11 Patricia Black, I believe Clark Blight and perhaps  
12 Mr. Switzer. Some of these people were in and out.  
13 I don't think Mr. Switzer was there. I think he may  
14 have been on leave at that point, but whoever was  
15 working on this from our side, for the most part, we  
16 had those people there.

17 She told the Treasury people she was very  
18 unhappy that they had released the transcripts, and  
19 she indicated that there was material in there that  
20 needed to be redacted. And there was -- a discussion  
21 ensued and what we said was well, this report we  
22 planned to have issued the next day, it was Friday

1 the 29th. And so we said well, well, what we agreed  
2 to was that she would leave a couple of her people  
3 there to read through all of the transcripts and  
4 suggest where redactions needed to be made,  
5 particularly where they related to the criminal  
6 referrals involving Madison Guaranty.

7 And their folks did stay, as did we all, I  
8 think, until about 11:00 or so that night going  
9 through the transcripts and I believe Patricia Black  
10 had the final say on what we would accept in the way  
11 of suggested deletions. And I think we went along  
12 with the vast majority of what they had suggested be  
13 redacted, and I believe in the next morning the final  
14 redactions were completed and that -- on the 29th,  
15 and the report was then issued with redactions.

16 Q Other than the release of the transcripts  
17 to the White House, are you aware that unredacted  
18 transcripts were released to anyone outside of RTC IG  
19 or Treasury IG's office? This is previous to July  
20 23rd.

21 A I guess I don't know if -- I don't think  
22 so.

1 MR. O'CALLAGHAN: I'd like to show you a  
2 document Bates stamped 366. Counsel, can take a look  
3 at it, too. It's a one-page document. It's an  
4 interoffice memo dated July 18 -- 18 July 1994, 6:24  
5 p.m. from Francine Kerner to James Cottos. Subject  
6 is delivery of transcripts.

7 (Witness reviewed the document.)

8 Q First, let me ask you a couple quick  
9 questions. Had you ever been told that Ms. Kerner  
10 supplied Mr. Schmalzbach and the office of assistant  
11 general counsel for administration in Treasury with  
12 copies of unredacted transcripts?

13 A No.

14 Q Have you ever seen this document before?

15 A I don't believe so, no, I have not. I do  
16 remember now that we asked each witness to verify  
17 their own transcript.

18 Q So you're aware of that?

19 A That --

20 Q Transferral?

21 A In that sense, the transcript went to the  
22 people who were interviewed so that they could

1 certify they were correct when they made changes.  
2 But no, I have not seen this or I'm not aware that  
3 transcripts were made available to the assistant  
4 general counsel for administration.

5 Q Does the fact that Ms. Kerner was supplying  
6 the Office of General Counsel with copies of  
7 unredacted transcripts, is that something that you  
8 would have expected the Treasury IG's office to  
9 inform RTC IG's office before -- either before or  
10 after it was done?

11 A First, I wouldn't expect that they would do  
12 that.

13 Q Why is that?

14 A Because the investigation was, involved the  
15 general counsel. And so to give transcripts of what  
16 other people were saying to the general counsel  
17 strikes me as inappropriate.

18 MR. PORTNOY: Just to clarify, that  
19 doesn't, that E-mail doesn't say the transcripts were  
20 given to the general counsel, does it?

21 THE WITNESS: That is true. It says to the  
22 assistant general counsel for administration who



1 obviously --

2 BY MR. O'CALLAGHAN:

3 Q Is a member of the general counsel's  
4 office?

5 A Is a member of the general counsel's  
6 office.

7 Q If the transcripts were given to the  
8 assistant general counsel for administration, would  
9 that constitute a communication or transfer of  
10 information with regard to the substance of the  
11 investigation, in your view?

12 A Well, the substance of the investigation, I  
13 think probably over 90 percent of the substance of  
14 the investigation is represented by what people told  
15 us in interviews as contained in the transcripts. So  
16 the answer would be yes.

17 Q Did you ever hear that Ken Schmalzbach, the  
18 assistant general counsel for administration in  
19 Treasury, may have received or -- received the  
20 transcripts before July 13th, 1994, before the 13th  
21 of July? This says the 18th.

22 A Says the 18th. No.

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1 Q Do you recall if you had any conversations  
2 with Francine Kerner on the 19th of July?

3 A The 19th of July. I'm trying to recall.  
4 Would that have been --

5 Q It would have been a Tuesday.

6 A There's a meeting in there somewhere with  
7 the independent counsel's office. Do you recall what  
8 the -- I guess I don't recall.

9 Q Just trying to refresh your recollection as  
10 to whether -- let me show you a document Bates  
11 stamped 534. It's a message pad, copied three  
12 messages from a message pad for Ms. Kerner. The last  
13 entry is for Francine dated 7/19, 9:56 in the morning  
14 it says "Joanne King, RTC Jack Adair's office."

15 A Returned your call. Joanne King returned  
16 your call.

17 Q Do you know who Joanne King is?

18 A Joanne is my secretary. But I don't know  
19 what that would have been.

20 Q This call was on the 19th and you said that  
21 you didn't recall being told about whether the  
22 transcripts were delivered to the general counsel's

1 office?

2 A Right.

3 Q And I'm just showing you this and wanted to  
4 know if it refreshed your recollection whether  
5 Ms. Kerner told you on the 19th or any time during  
6 that, near that time --

7 A No, she sure did not.

8 Q In relation to the investigation that was  
9 conducted by the two IGs' offices, is there a  
10 chronology or draft report that was prepared?

11 A Yes. I think on the 22nd of July a draft  
12 report went to Secretary Bentsen and I believe also  
13 to the Office of Government Ethics which is basically  
14 a chronology of the contacts that were made.

15 Q Okay. And who was the chronology prepared  
16 by?

17 A Well, I guess it was prepared, I want to  
18 say pretty much jointly with joint input from the two  
19 staffs of the Treasury and RTC IG offices. I'm not  
20 exactly sure who would have physically put the  
21 material into the computer for it.

22 Q I just meant with regard to, you know, the

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1 staff members who were working on the substance of  
2 it, making decisions on it?

3 A Yeah, I think both IG offices were involved  
4 in that.

5 Q After the draft was delivered to  
6 Mr. Bentsen and --

7 A And the government ethics, I believe Jane  
8 Ley of government ethics.

9 Q Just refresh your recollection quickly,  
10 this is a Document 414 which is a July 22nd letter.

11 A Okay.

12 Q Does that refresh your recollection as to  
13 who? The Bates is 414.

14 (Witness reviewed the document.)

15 A Okay. So we sent it officially to  
16 Mr. Potts, director of government ethics, but I  
17 suspect Jane Ley was the person who actually reviewed  
18 it and I think gave us comments.

19 Q Okay. So after it was sent to OGE, you  
20 received comments on it?

21 A I believe so. I believe I recall seeing  
22 comments from somewhere, I've seen comments from Jane

1 Ley on it. Now, as to exactly whether it was before  
2 the draft or after the draft now I'm having trouble  
3 remembering when that would have been. So I guess I  
4 shouldn't say for sure it came after that.

5 Q Well, after the draft on the 22nd was  
6 delivered to OGE and to Treasury, were any subsequent  
7 changes made to it?

8 A I believe so. I think there was at least  
9 one interview that hadn't been done at that point,  
10 and I think some of the people made changes to their  
11 transcripts, you know, some people were interviewed,  
12 reviewed their transcripts and said wait a minute, I  
13 don't think I said this, this needs to be changed and  
14 so, yes, there were changes.

15 Q And were there any changes made by the  
16 Office of Government Ethics as to the report, the  
17 chronology?

18 A I don't know if they made changes to it. I  
19 think they may have asked questions or asked for  
20 clarifications along those lines. I mean, it was our  
21 report, so they wouldn't have made changes to it.  
22 They might have discussed that something needed to be

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1 clarified or there may be gaps that they wondered  
2 about. That sort of thing.

3 Q Okay. I'd like to show you a document  
4 Bates stamped 02479 through 02482.

5 (Witness reviewed the document.)

6 MR. O'CALLAGHAN: Let me know when you've  
7 had a chance to review it. I'll ask you some  
8 questions.

9 (Witness reviewed the document.)

10 THE WITNESS: These are suggested changes  
11 by Secretary -- these are suggested changes from the  
12 Secretary's review team is what it says. Okay.

13 BY MR. O'CALLAGHAN:

14 Q Okay. Just -- you can hold on to that.  
15 I'm going to ask you a couple questions. Just for  
16 identification purposes, it's a multipage document  
17 with a fax cover page, date line July 25th, 1994.  
18 Have you ever seen this document before?

19 A I believe I have, yes.

20 Q Have you seen the cover page before?

21 A I think, I believe I have, I believe so. I  
22 was not in the office this day, it being my

1 anniversary, but I'm sure I have seen this.

2 Q And --

3 MR. PORTNOY: Excuse me, sir. "This"  
4 being?

5 THE WITNESS: This being the --

6 MR. PORTNOY: The cover sheet or the  
7 inside?

8 THE WITNESS: Well, I believe, I'm certain  
9 I've seen the inside. I don't know that I would have  
10 seen the cover sheet. It might have been removed and  
11 I just don't recall.

12 BY MR. O'CALLAGHAN:

13 Q Okay. What's after we get past the cover  
14 sheet, what's contained in this document?

15 A It appears to be a number of suggested  
16 changes to the draft report on a page-by-page basis.

17 Q Okay. There are in or around July 25th  
18 or -- I guess you weren't in July 25th, the day  
19 after, did you receive revisions to the draft  
20 chronology?

21 A Well, I'm sure the draft was revised, and  
22 I'm sure if it was revised I would have received a

1 copy. As to which, if any, of these changes were  
2 made --

3 Q I'm not asking about the ultimate changes,  
4 I'm just asking about whether you received revisions  
5 in the form that appear in this document?

6 A You are saying did I receive --

7 Q Suggested revisions.

8 A Did I receive this document or did I  
9 receive a draft, a revised draft that included these  
10 changes?

11 Q Well, why don't we just start with did you  
12 receive documents of this nature after July 25th that  
13 listed suggested revisions to the draft?

14 A I believe I did receive this. I did see  
15 this, yes.

16 Q You saw this particular one?

17 A Right.

18 Q Did you receive any other documents similar  
19 to this that also contained changes?

20 A I'm thinking that I received something with  
21 suggested changes from the Office of Government  
22 Ethics. I'm thinking we received that based on their

1 review of the draft report. There may have been some  
2 questions or comments as well, and I believe my  
3 thinking upon seeing this was we may or may not  
4 accept the suggested changes depending on what our  
5 belief is. So that's how I viewed them, as  
6 suggestions.

7 Q Did you receive any suggested revisions  
8 from any other offices, Treasury IG's office or from  
9 Treasury general counsel's office?

10 A I don't believe we received anything that I  
11 was aware of from Treasury general counsel's office  
12 suggesting changes. The Treasury IG's office  
13 certainly had input into whatever changes might have  
14 been made in the final, just as we did, in the final  
15 product, I should have said.

16 Q So as far as you know, there's suggested  
17 changes and -- changes made between July 22nd and the  
18 issuance of the final report, suggestions were made  
19 by OGE, RTC IG's office and Treasury IG's office?

20 A Yes.

21 Q Are you aware of any other offices or  
22 agencies that made suggested changes or revisions to

1 the draft?

2 A I am not.

3 Q I'd like to show you a document Bates  
4 stamped 01495 and it looks like there's an 8 after  
5 that.

6 (Witness reviewed the document.)

7 A Okay. I've not seen this prior to this  
8 time.

9 Q For the record, July 29th, 1994 memorandum  
10 for Kenneth R. Schmalzbach from R. Peter Rittling.  
11 Subject is review of the OGE's final chronology of  
12 White House contacts. Do you know who  
13 Mr. Schmalzbach is?

14 A My understanding is that he's in the Office  
15 of General Counsel of the Treasury and I believe he  
16 was Francine Kerner's boss.

17 Q After looking at this document, which reads  
18 the OGE incorporated many of our recommended changes  
19 in the final chronology, and some of the recommended  
20 changes were typographical errors and some were  
21 substantive changes.

22 Does this refresh your recollection as to



1 whether the Office of General Counsel made edits or  
2 changes to the draft chronology?

3 A As to whether the Office of General Counsel  
4 made changes.

5 Q The Treasury, correct.

6 MR. PORTNOY: For the record, you're asking  
7 his recollection be refreshed with a document that he  
8 never --

9 MR. O'CALLAGHAN: I'm asking about the  
10 information.

11 MR. PORTNOY: That he never saw before.

12 MR. O'CALLAGHAN: I'm asking about the  
13 information in the document.

14 THE WITNESS: Can you rephrase or repeat  
15 the document, please?

16 BY MR. O'CALLAGHAN:

17 Q Sure. After looking at the document and  
18 the information contained in it, does it refresh your  
19 recollection whether you ever heard that the Office  
20 of General Counsel, Treasury contributed to editing  
21 the IG's chronology that was prepared for the  
22 investigation?

1 A No. I guess whoever this review team was  
2 that's mentioned, Secretary's review team is  
3 mentioned in the other document.

4 Q I'm not asking you to make a conclusion  
5 with regard to other documents. Looking at this  
6 document solely, which indicates Peter Rittling is  
7 also in the Office of General Counsel, his amendment  
8 to Mr. Schmalzbach.

9 A Okay. I didn't know that.

10 Q The question was -- I guess my next  
11 question is, are you surprised that edits were made  
12 by the Office of General Counsel to the chronology?

13 A Well, they weren't made, they were  
14 suggested, apparently suggested by what I'm piecing  
15 together is that the document you showed me  
16 previously that mentions the Secretary's --

17 Q Actually, I'd like you to --

18 A Okay. Am I surprised at what, now?

19 Q Just focusing on this memorandum which  
20 indicates that there were -- recommended changes to  
21 the final chronology were incorporated by the Office  
22 of Inspector General's office.

1 MR. PORTNOY: Were incorporated or were --

2 THE WITNESS: That's what it says.

3 MR. O'CALLAGHAN: The first sentence, that  
4 they were incorporated.

5 MR. PORTNOY: Okay.

6 BY MR. O'CALLAGHAN:

7 Q Would you -- could you read back what I  
8 just said.

9 (The reporter read the record as requested.)

10 BY MR. O'CALLAGHAN:

11 Q Okay. That recommended changes made by  
12 Office of General Counsel. Would that be surprising  
13 to you that general counsel had had that kind of  
14 input?

15 A Yes, it would be a surprise to me that  
16 general counsel would have been involved in providing  
17 input into the suggested changes, yes.

18 Q And why is that?

19 A Well, because obviously Jean Hanson being  
20 the general counsel and this being a review of her  
21 activities with regard to Treasury-White House  
22 contacts, I would have thought that the general

1 counsel's office would have stayed away from this  
2 particular draft report.

3 Q And did they participate in contributing to  
4 the draft report or suggesting edits that were  
5 eventually incorporated? Would that have been  
6 against the spirit of the reason Mr. Bentsen asked  
7 independent groups to run the investigation?

8 MR. PORTNOY: Objection. You are asking  
9 the witness to speculate about Mr. Bentsen's purposes  
10 and he has no idea what Mr. Bentsen's purposes were.

11 MR. O'CALLAGHAN: I asked him earlier about  
12 his understanding of why he asked outside people to  
13 run the investigation and he gave his understanding.  
14 And I'm asking if conduct of this nature goes against  
15 that.

16 MR. PORTNOY: It would be appropriate --

17 MR. O'CALLAGHAN: It's an appropriate  
18 question.

19 MR. PORTNOY: -- if it's in some way  
20 contrary to his understanding of the purpose of the  
21 investigation. But it's not appropriate to ask the  
22 witness if it's contrary to somebody else's

1 understanding of the investigation.

2 MR. O'CALLAGHAN: The question was properly  
3 asked about whether or not Mr. Adair was of the -- if  
4 it is his understanding that if the Office of General  
5 Counsel contributed to the chronology or revisions.  
6 Let me start that over again. Here's the -- I'll  
7 rephrase the question. It will probably be  
8 essentially the same question. I still believe it's  
9 appropriate.

10 BY MR. O'CALLAGHAN:

11 Q What was your understanding -- I'll ask you  
12 again. What was your understanding as to why  
13 Secretary Bentsen asked the OGE to conduct the  
14 analysis of the appropriateness of the Treasury-White  
15 House contacts?

16 A Well, so that there would be an independent  
17 and objective review by some entity outside the  
18 Department of the Treasury of Treasury-White House  
19 contacts.

20 Q Okay. And if the Office of General  
21 Counsel, Treasury had been involved in making changes  
22 to the draft chronology, according to your

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1 understanding of Secretary Bentsen's reason for  
2 asking other people to do the investigation, would  
3 that activity have been against the spirit of the  
4 reason for Secretary Bentsen's asking the people to  
5 do --

6 MR. PORTNOY: Just to clarify, the record  
7 doesn't reflect that the Office of the General  
8 Counsel was involved in making changes. The witness  
9 testified that he viewed these as suggestions that  
10 the Inspectors General either accepted or didn't  
11 accept at their own instance and I just want that to  
12 be clear.

13 THE WITNESS: Well, you are basically  
14 asking me to speculate what Secretary Bentsen was  
15 thinking of here in his initial decision to have the  
16 Office of General -- Government Ethics involved and  
17 then in turn to what appears to be -- well, I can't  
18 even speculate on that. In terms of did he ask the  
19 general counsel's office to provide comments. And I  
20 just don't know quite how to answer because I don't  
21 quite know what was going through his mind at the  
22 time or whether he directed this review by general

1 counsel.

2 We never know, when we get a report to the  
3 head of the agency, whether the head of the agency  
4 takes the time to read it or not or just delegates it  
5 to the gatekeeper or whoever their special assistant  
6 is to handle it. I think my answer is that I would  
7 have expected that the Office of General Counsel  
8 would have stayed removed from this report as it  
9 could have simply because Jean Hanson was one of the  
10 people being investigated in this matter. So it  
11 would have surprised me to know that the general  
12 counsel was providing its suggested changes to the  
13 report. And we did not know that. I did not know  
14 that.

15 MR. O'CALLAGHAN: Thanks.

16 MR. PORTNOY: Just to clarify, you said  
17 that you didn't know, not that no one --

18 THE WITNESS: I do not know that and I  
19 don't believe anyone in our office was aware of that  
20 either. They would have told me of that. I think  
21 someone would have said the Office of the General  
22 Counsel was involved in this.

1 MR. O'CALLAGHAN: I think we've had  
2 testimony from people in your office that they had no  
3 knowledge either.

4 BY MR. O'CALLAGHAN:

5 Q I'd like to direct your attention again to  
6 July 26th, the day when I believe you said Mr. Cesca  
7 informed members of your group that the transcripts  
8 had been released to the White House. Did he tell  
9 you exactly the process that was involved in  
10 releasing the transcripts to the White House, how it  
11 came to be?

12 A He indicated to me that he had received a  
13 phone call Saturday night, I think he said about  
14 10:30, somewhere in that vicinity, and I believe he  
15 said it was from Ed Knight, that's my recollection,  
16 who was the special assistant to Secretary Bentsen or  
17 some such title, saying that the Secretary wanted to  
18 provide the transcripts to the White House, provided  
19 the Inspector General didn't have an objection to  
20 that. And I believe Mr. Cesca indicated that he  
21 checked with his counsel, Francine Kerner, and that  
22 they decided that the transcripts could be released.

1 Q Did he say how Secretary Bentsen came to  
2 want to provide the transcripts to the White House?

3 A I believe that he indicated to me that  
4 Mr. Cutler had asked Secretary Bentsen for the  
5 transcripts because he was scheduled to testify on  
6 the 26th, that day in fact, and felt he needed the,  
7 to have the information from all the people who had  
8 been interviewed to prepare himself to testify.

9 Q Did he tell you that Mr. Cutler personally  
10 made the request to Mr. Bentsen, if you recall?

11 A I guess I had that impression. Whether he  
12 actually said that or not, that was my impression,  
13 that Mr. Cutler and Mr. Bentsen may have -- but I may  
14 be wrong on that. It's just an impression I had. It  
15 may have been handled at a lower level.

16 Q Okay. Was this your, this is what  
17 Mr. Knight told Mr. Cesca, just to be clear?

18 A That the, I believe Mr. Knight told  
19 Mr. Cesca that Secretary Bentsen wanted to provide  
20 the transcripts to Mr. Cutler provided that was all  
21 right with the Inspector General.

22 MR. GIBSON: And that, of course, is based

1 on what Mr. Cesca told you.

2 THE WITNESS: Yes. That's my recollection  
3 of what he told me.

4 MR. PORTNOY: So we're in triple hearsay.

5 BY MR. O'CALLAGHAN:

6 Q Did he tell you how the transcripts were  
7 brought over to the White House, did he deliver them,  
8 did somebody else?

9 A I don't recall how they were delivered.

10 Q Do you know if they were delivered by the  
11 Inspector General's office or by another office in  
12 Treasury?

13 A You know, I saw a letter I believe from a  
14 Mr. McHale.

15 Q I can show you, it's Document 6877.

16 A Okay. That's the letter.

17 Q July 23rd letter to Jane Sherburne from  
18 Stephen McHale. But just at the time, did he tell  
19 you how they were delivered or did he just say they  
20 were brought over?

21 A I don't recall whether he indicated how  
22 they were delivered, just that they were provided to



1 the White House on the 23rd.

2 Q Okay. Did you ever, have you since learned  
3 how they were delivered or were handled, what office  
4 handled the transfer of the transcripts?

5 A We saw subsequently the letter from  
6 Mr. McHale, from the general counsel's office which  
7 says this is being delivered by hand to the White  
8 House, but again that doesn't -- it says "enclosed  
9 are copies of the transcripts," which would imply  
10 that Mr. McHale had the transcripts to be sent.

11 Q I guess independent of the letter.

12 A No, I don't know how they got to the White  
13 House, just that they were provided.

14 Q Okay. When you first saw the letter, did  
15 you have any reaction that once again, the general  
16 counsel's office was involved?

17 A I guess my reaction at that point was it  
18 looked like the general, that Mr. McHale of the  
19 general counsel's office may have been in possession  
20 of the transcripts at some point. If you could  
21 interpret that from reading the letter that, since,  
22 "enclosed are copies of the transcripts," that he

1 may have had the transcripts in his possession, but I  
2 wasn't exactly sure who had what at that point.

3 It was clear that the White House already  
4 had them and quite possible that the general  
5 counsel's office had them as well. I think by the  
6 time we saw this, this was the week the report was  
7 being finalized, and I'm not sure what my reaction  
8 was at that point. Probably at that point nothing  
9 was surprising me about where the transcripts were.

10 Q Okay. I'd like to show you a document,  
11 it's multipages, begins 06107 and goes all the way  
12 through to 06128.

13 (Witness reviewed the document.)

14 A This is a strange date.

15 Q That's basically going to be my only  
16 question on it. One of the few questions on the  
17 document. On the fax cover sheet there's a date  
18 3/23/94, it's to you from Stuart Rick, who I believe  
19 is from the Office of Government Ethics. And there's  
20 also a fax line that says, it looks like 3/23/94 as  
21 well.

22 A It does, indeed. But inside there are

1 comments on the draft report.

2 Q Which is dated 7/26/94; is that right?

3 A Yes.

4 MR. PORTNOY: Could the record reflect that  
5 the internal comments don't seem to have the same fax  
6 line that's on the cover page.

7 MR. O'CALLAGHAN: Actually, I think they  
8 do, Jim. It's just not as clear. So it's the same  
9 document as far as I know and it's also sequentially  
10 the same in the Bates as they were produced. So it  
11 appears to be the same fax line across throughout.  
12 That's why the question was being raised whether.

13 MR. PORTNOY: I couldn't see it from here.

14 THE WITNESS: You want speculation on the  
15 3/23?

16 BY MR. O'CALLAGHAN:

17 Q Just if you have any idea.

18 A That appears to have been around the time  
19 we had our first meeting with the Office of  
20 Government Ethics people in that March time frame and  
21 perhaps they had faxed something to us in March and  
22 then used the same cover, but then what would that,

1 that wouldn't account for this.

2 Q Okay. Well, actually, I'd like to also --

3 A I don't know.

4 Q I'd like to -- I think the cover sheet also  
5 says it's only six pages.

6 A So it's -- clearly, the cover sheet doesn't  
7 belong with what's attached.

8 Q Okay.

9 A I guess we don't have an answer for that.

10 Q Looking at pages 06108 through 06111, is  
11 this an example of a, suggested changes that were  
12 given to you by Office of Government Ethics?

13 A Yes, this appears to be, as it says,  
14 comments that they have about the draft report.

15 Q And it also says they're from Pat Black as  
16 well. Did she work with anyone at OGE in making  
17 revisions?

18 MR. PORTNOY: I believe it says to Pat  
19 Black.

20 THE WITNESS: It's to Francine Kerner and  
21 Pat Black from Jane Ley.

22 BY MR. O'CALLAGHAN:

1 Q I see. Thank you. Following the meeting  
2 on the 26th of July when Mr. Cesca informed you that  
3 the transcripts had been delivered to the White  
4 House, did you have any subsequent conversations with  
5 him with regard to the transfer of the transcripts?

6 A Not that I recall. As I said, I was  
7 pleased that he had indicated in the story that  
8 appeared in the newspapers that it was his decision  
9 and that we weren't involved in the decision. I  
10 think if he had indicated otherwise, I might have had  
11 some conversations with him about that.

12 (Recess.)

13 BY MR. O'CALLAGHAN:

14 Q During July of 1994, did you have any  
15 contact with Ed Knight at Treasury?

16 A I did not.

17 Q Did anyone in your office?

18 A Not to my knowledge.

19 Q How about Jack Ryan, do you know if he had  
20 any contacts with him?

21 A I don't know.

22 Q Did Mr. Ryan ever tell you he had contacts

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1 or communications with Mr. Knight?

2 A No.

3 Q I'd like to show you a document which has  
4 bears a Bates stamp 06092. Let me know when you've  
5 had a chance to review it.

6 (Witness reviewed the document.)

7 A Okay. I remember this.

8 Q For the record, it's a one-page document,  
9 appears to be an E-mail to John J. Adair, Steven A.  
10 Switzer -- is it Switzer or Switzer?

11 A Switzer.

12 Q -- from Patricia M. Black. And you've  
13 already answered the first question. Have you seen  
14 this document before?

15 A Yes, I've seen this.

16 Q And could you tell me the circumstances  
17 surrounding this document or the events that are  
18 discussed?

19 A As I recall this, Mr. Cutler was going to  
20 send a letter to the Hill regarding the provision of  
21 the transcripts to the White House by the Treasury,  
22 and the draft of the letter had indicated that the

1 White House had agreed to provide witnesses to the  
2 IGs and then in turn, the IGs had agreed to provide  
3 transcripts. And Pat Black immediately indicated to  
4 Francine that that was completely incorrect and  
5 wanted to somehow have the letter revised to make  
6 sure there was no misunderstanding, that there was no  
7 indication that we had ever agreed that they could  
8 have the transcripts.

9 Q If I could interrupt you for just a moment,  
10 did you have an understanding that -- or let me start  
11 over, rephrase that.

12 Had the RTC IG ever agreed to provide the  
13 White House transcripts?

14 A We had not.

15 Q So your understanding was consistent with  
16 Ms. Black's?

17 A That's correct. And, in fact, I recall we  
18 did receive a draft of Mr. Cutler's letter. We did  
19 have input into it, made it clear that we were not  
20 involved in the, in any trade-off of transcripts for  
21 witnesses as was implied in this discussion. And  
22 then the revised letter was sent to the Hill.

1 Q Thank you. Did you ever learn that  
2 Francine Kerner called Mr. Schmalzbach during or  
3 after the July 28th meeting?

4 A Yes, I did.

5 Q And what did you learn?

6 A Well, I saw a list of telephone calls made  
7 from the Secretary's desks, from my deputy  
8 Secretary's desk that included one or more calls to  
9 Mr. Schmalzbach. And I was told by, I believe it was  
10 Patricia Black that that was the phone that Francine  
11 had been using and that she in fact had seen Francine  
12 making calls from the phone, and so that's my  
13 understanding.

14 Q And had Ms. Kerner ever told that you she'd  
15 been in contact with Mr. Schmalzbach?

16 A No.

17 Q So your understanding is just from what  
18 Ms. Black told you and from looking at the phone  
19 records; is that right?

20 A Yes.

21 Q And how were the phone records brought to  
22 your attention?

1 A Ms. Black and Mr. Blight got copies of the  
2 phone records. I believe Ms. Black had become aware  
3 of some information that indicated that perhaps  
4 someone had been providing information to the general  
5 counsel's office at Treasury, and decided to see if  
6 any of that information, on a particular date in  
7 fact, had come from our office during the course of  
8 meetings that we were having with the Treasury IG  
9 folks. So she had, she got ahold of copies of the --  
10 she and Mr. Blight got ahold of copies of the phone  
11 records for certain dates.

12 Q Do you know what the basis of her belief  
13 was that information was being given to the general  
14 counsel's office?

15 A She had been shown a memo when meeting with  
16 the independent counsel's investigators that  
17 indicated that Mr. Schmalzbach had sent a memo to, I  
18 believe, Mr. Knight regarding information he had  
19 apparently just received from someone in the IG  
20 office at Treasury. And so I believe Ms. Black and  
21 Mr. Blight wanted to see if anybody had in fact  
22 called Mr. Schmalzbach on that date at that

1 particular time when the E-mail had been sent on or  
2 about that time. And they came up with a pretty  
3 close match in terms of the time of day that a call  
4 was placed from our office to Mr. Schmalzbach and  
5 subsequent E-mail time, Mr. Schmalzbach E-mailed to  
6 Mr. Knight.

7 Q And did you take any action after this was  
8 brought to your attention?

9 A Did I?

10 Q Correct.

11 A No. I believe, though, that Ms. Black --  
12 can we go off the record for a second?

13 MR. O'CALLAGHAN: Sure.

14 (Discussion off the record.)

15 THE WITNESS: What was the question again?  
16 Did I do anything with the information personally?

17 BY MR. O'CALLAGHAN:

18 Q Correct. Did you take any action, did you  
19 advise anybody at the Treasury Inspector General's  
20 office about the information you found or anyone  
21 else?

22 A I spoke to Valerie Lau, who is now the



1 Inspector General, after she had been confirmed and  
2 this was sometime, let's see, yeah, I spoke to her,  
3 and I can't really tell you the exact date of that or  
4 anything. I just recall talking to her that there  
5 had been a problem with the previous counsel. And I  
6 can't recall whether I actually got into the phone  
7 calls and so forth. So maybe the answer to that is,  
8 if your question is did I discuss the phone records  
9 and so forth with anybody else, I don't think so. I  
10 don't think so. I think it was in more general terms  
11 of having a discussion with Valerie Lau of having  
12 problems with a counsel that is not within the IG  
13 office, but rather within the Office of the General  
14 Counsel.

15 Q To your recollection, was there a specific  
16 problem with the information that was actually -- let  
17 me show you Document 11124. Take a moment to review  
18 that.

19 (Witness reviewed the document.)

20 A Okay.

21 Q Okay. For the record, the document I just  
22 showed you appears to be an E-mail from Kenneth

1 Schmalzbach to Knight, it looks like initial E.  
2 afterwards, date, 7/28/94. 10:44 a.m. Subject is  
3 Ryan and Adair telephone calls. The first question,  
4 have you seen this before, this document?

5 A I have not.

6 Q Are you aware of the concerns that  
7 Ms. Black had with regard to information that she  
8 suspected was going to the general counsel's office?

9 A This appears to be the memo that Ms. Black  
10 had seen which prompted her to check the phone  
11 records at our office to see if in fact the phone  
12 call had been made to Mr. Schmalzbach on July 28th in  
13 the vicinity of 10:44 a.m.

14 Q Did she relate to you specific problems  
15 that she had with the information she believed to  
16 have been transferred to the general counsel's  
17 office?

18 A Well, I mean, she, like all of us, were  
19 concerned that Francine would have been calling the  
20 general counsel's office and providing information on  
21 meetings that the IG was holding on the  
22 investigation. And of course, we were all concerned

1 if that in fact was going on, which appears to be the  
2 case, based on this E-mail.

3 Q Okay. Thank you. You said earlier that it  
4 was your understanding that the transcripts were  
5 provided to the White House to help Mr. Cutler  
6 prepare for his testimony; is that right?

7 A That's my understanding.

8 Q Do you have any knowledge whether the  
9 transcripts were used to prepare other White House  
10 witnesses for testimony, other than Mr. Cutler?

11 A I don't, I don't know how they were used,  
12 no.

13 Q Do you have any knowledge of whether  
14 there's an agreement that had been entered into by  
15 Mr. Cutler and Secretary Bentsen for transfer of the  
16 transcripts before July 23rd, 1994?

17 A I have no knowledge of that.

18 Q Do you have any knowledge of whether any  
19 witnesses for the Congressional hearings that summer,  
20 the subject -- who altered their testimony due to the  
21 benefit of having unredacted copies of the  
22 transcripts?

1 A I don't have any knowledge of that.

2 Q Did you have any contact with Ms. Sherburne  
3 during July of 1994?

4 A I don't believe I had any contact with her  
5 at all, no. I believe that was handled by Ms. Black.

6 Q And how about with Ms. Kerner?

7 A Oh, yes, she was in a number of meetings  
8 that I was in, also in.

9 Q I'd like to shift gears for a moment here  
10 and ask you about another issue involving three  
11 individuals who were I believe members of your office  
12 of investigations out in Kansas City, RTC's office of  
13 investigation out in Kansas City?

14 A RTC's office.

15 Q And their names were and are L. Richard  
16 Iorio, R. Jean Lewis and Lee Ausen, A-u-s-e-n. Did  
17 you have any involvement with the issue regarding  
18 those three individuals being put on administrative  
19 leave --

20 A No.

21 Q -- in 1994? Was your office ever contacted  
22 to do an investigation with regard, that involved

1 these three individuals?

2 A Were we contacted to do an investigation?

3 Q Correct.

4 A Yes. They were placed on administrative  
5 leave, I want to say, somewhere around the middle of  
6 August. I remember reading about it. I was at the  
7 beach on vacation when I saw the story in the  
8 newspaper, and I called our office to see what was  
9 going on with that.

10 Q Probably the last thing after the earlier  
11 investigation?

12 A That's exactly right. It's just sort of  
13 one thing after another. And there was something of  
14 an uproar over placing the three individuals on  
15 administrative leave with the newspaper articles and  
16 letters from the Hill. We subsequently received  
17 letters, a letter or letters from the attorneys for  
18 two or -- two of the three or perhaps all three  
19 asking if our office would not be the proper place to  
20 have an investigation of the three individuals  
21 conducted, and --

22 Q Excuse me, of the individuals or of the

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1 issue of having them put on administrative leave?

2 A Well, more the issue of having them put on  
3 administrative leave, that's correct. And then we  
4 received a letter from Mr. Ryan asking for a memo from  
5 Mr. Ryan asking that we investigate the three  
6 individuals for matters that had been looked into by  
7 Mr. Ryan's staff and were now going to be forwarded  
8 to the Office of Inspector General for review. So,  
9 in essence, Mr. Ryan and/or the attorneys for the  
10 individuals were asking for an independent review by  
11 the Office of Inspector General.

12 Q You were getting it from both sides?

13 A Yes.

14 Q And what action did you take or not take  
15 with regard to both requests?

16 A We determined that we could look at both  
17 sides of the issue in an investigation. Before we  
18 could proceed, we needed to get the specifics of the  
19 allegations that were being made against the three  
20 individuals, and that took several weeks for the  
21 office of -- for the RTC to pull together. And in  
22 the meantime, as is our custom, we were in contact

1 with the independent counsel's office. And when we  
2 received the information which enabled us to go ahead  
3 with the investigation, we contacted the independent  
4 counsel's office in writing and said we're about to  
5 undertake this review unless this would interfere  
6 with your work. And we were advised immediately that  
7 independent counsel would prefer that we not conduct  
8 the investigation, that they would let us know when  
9 they believed it would be appropriate for us to  
10 conduct the investigation. And thus far, we have not  
11 been so advised. So that investigation is in  
12 abeyance, I suppose you could say.

13 Q And had anyone in your office been  
14 identified as a person who would want to review or  
15 investigate those matters?

16 A I think Pat Noble of our office had been  
17 identified as a person to lead that investigation.

18 Q And had you received any offers of  
19 assistance from other offices of RTC in conducting  
20 the investigation of the three individuals?

21 A Of assistance, well, no. They had, some of  
22 the RTC people had already conducted their own review

1 of matters and accumulated information which they had  
2 sent to us, but we would not be working with anybody  
3 from RTC. We would do this independently on our own.

4 Q Do you know if there was ever an offer to  
5 allow anyone from your office to inspect the offices  
6 of the three individuals?

7 A Yes, I received a phone call from  
8 Mr. Tomback, I think it was Erica Cooper also. Was  
9 it Erica?

10 MR. GIBSON: Erica.

11 THE WITNESS: Called me the Friday before  
12 the three individuals were to be returned to work.

13 BY MR. O'CALLAGHAN:

14 Q From their administrative leave?

15 A From their administrative leave. And  
16 indicated to me, they indicated to me that perhaps my  
17 office would want to, my agents would want to search  
18 the offices of the three individuals, and I indicated  
19 to Mr. Tomback and Ms. Cooper that that didn't seem  
20 to be an appropriate thing for us to do absent any  
21 really good reason to do that. And I asked him if  
22 they had any specific reason that they could give to

1 me over fax or whatever, that they should send it and  
2 I would take a look at it and consider it. And they  
3 declined to provide anything at that point and so we  
4 did not do any search of their offices. It's just  
5 something we would not normally do in any  
6 investigation.

7 Q Did they make an indication to you that any  
8 searches had been conducted of the offices?

9 A No, they did not.

10 MR. O'CALLAGHAN: I have no further  
11 questions.

12 (Discussion off the record.)

13 EXAMINATION

14 BY MR. PORTNOY:

15 Q Good morning, Mr. Adair.

16 A It's this afternoon.

17 Q As close to morning as it's ever been when  
18 I've begun my portion of the questioning, so I'm  
19 sticking with good morning. My name is Jim Portnoy,  
20 sir, and I'm counsel for the Democratic staff for the  
21 Committee. I also have just a few questions for  
22 you.

1 Is it your view that the investigation that  
2 your office conducted was complete?

3 A At the time the transcripts were  
4 provided -- oh, I'm sorry, was complete and thorough,  
5 is that what you are saying?

6 Q Yes.

7 A I think it was our view that we interviewed  
8 everyone that we believed needed to be interviewed  
9 and therefore was complete, yes.

10 Q And thorough?

11 A Yes, I believe I was thorough.

12 Q There was no one else you wanted to speak  
13 to that you couldn't speak to?

14 A No, I believe everyone we thought should be  
15 interviewed was ultimately interviewed and included  
16 in the report.

17 Q Were there any documents you needed access  
18 to that were denied you?

19 A Not that we are aware of, although I guess  
20 we did request a certification from the White House  
21 as to all the documents that were provided, as to  
22 whether that was everything and I don't believe we



1 ever actually got one of those certifications. But  
2 to the best of our knowledge, we had all the  
3 documents.

4 Q Did the White House cooperate in making  
5 witnesses available?

6 A Yes, they did.

7 Q Did the White House cooperate in making  
8 documents available?

9 A Yes, they did.

10 Q Did the Treasury Department cooperate in  
11 making witnesses available?

12 A Yes.

13 Q And in making documents available?

14 A Yes.

15 Q Did the RTC cooperate in making witnesses  
16 available?

17 A Yes.

18 Q And in making documents available?

19 A Yes.

20 Q Did anyone from outside your office or the  
21 Office of the Inspector General at the Treasury  
22 Department or the office of general, Office of

1 Government Ethics try, in your judgment, to pressure  
2 you with respect to the results of your  
3 investigation?

4 A No, they did not.

5 Q Did anybody try to direct you to a  
6 particular result?

7 A No.

8 Q Did anybody try to limit the scope of your  
9 inquiry?

10 A No -- well, with the possible exception  
11 that there were some limits perhaps on the questions  
12 that could be asked to certain of the White House  
13 people as to who they told within the White House  
14 about, you know, when they received information from  
15 Treasury folks

16 Q Do you recall, sir, whether those  
17 limitations were arrived at during consultations  
18 between your office or most specifically, more  
19 specifically Mr. Cottos and private counsel for those  
20 witnesses?

21 A I believe the Treasury IG folks made those  
22 arrangements with the White House.

1 Q With?

2 A With White House, Ms. Sherburne.

3 Q You don't know that it was with the White  
4 House counsel's office, do you, sir?

5 A I personally do not recall how they came to  
6 that arrangement. But I guess our agents were told  
7 that it had been agreed that in interviewing the  
8 White House people that we were supposed to limit our  
9 questioning, as I recall, to not to include who the  
10 people in the White House we were interviewing had  
11 told about with regard to the information they had  
12 received from Treasury.

13 Q Those limitations could have been arrived  
14 at through negotiations with the private counsel for  
15 the witnesses, could they not?

16 A This may be true, and I'm not exactly  
17 certain how we arrived at those limitations.

18 Q With the exception of the matter you just  
19 raised, did anybody try to limit the scope of your  
20 inquiry?

21 A No.

22 Q You testified that the CEO of the RTC

1 receives draft audit reports from your office?

2 A Yes.

3 Q And also that the CEO is kept apprised of  
4 ongoing investigations in some fashion?

5 A Well, if the CEO has an interest in a  
6 particular investigation, he can ask to receive a  
7 briefing as to the status of the investigation and we  
8 would provide him with such a briefing.

9 Q Might that briefing include some indication  
10 of the factual material that you've developed up to  
11 that point?

12 A It could, yes.

13 Q So you might, in the course of an  
14 investigation, apprise the CEO of the Resolution  
15 Trust Corporation of the actual evidence that you've  
16 developed in the course of your investigation?

17 A Yes, we could do that.

18 Q So in your view, it's appropriate for the  
19 head of an agency to get information concerning an  
20 investigation while that investigation is ongoing?

21 A For the most part, I think I would agree  
22 with that, yes, although I should say that draft

1 reports are not provided to the head of the agency on  
2 investigations. They basically are not, just  
3 normally not done.

4 Q But information --

5 A Yes.

6 Q -- that might find its way into a draft  
7 report would be provided to the head of an agency?

8 A Yes, that's right.

9 Q In your view, then, sir, would it have  
10 appropriate for the Treasury Department  
11 investigator -- Inspector General's office to provide  
12 a draft report to Secretary Bentsen?

13 A Yes. In this case where he needed to be  
14 able to make a determination as to whether action  
15 should be taken against the general counsel or the  
16 deputy or other members of the Secretary of the  
17 Treasury's staff, we believed it was appropriate that  
18 the Secretary Bentsen could receive a draft report.

19 Q Your report was drafted with reference to  
20 the deposition transcripts, was it not, sir?

21 A Yes. It's basically selected observations  
22 from the transcripts, the depositions, that find its

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1 way in that chronology of contacts, that's correct.

2 Q And in order to get a full understanding of  
3 your report, you ultimately concluded that it would  
4 be necessary to append the deposition transcripts,  
5 did you not?

6 A That's correct.

7 Q So in order for Secretary Bentsen to have a  
8 full understanding of your draft report, it would  
9 have been necessary for him to have access to the  
10 deposition transcripts, would it not?

11 A Yes, if he wanted to get into the details  
12 of the draft report, he would have had to look, he  
13 would have had to go to the transcripts for further  
14 information.

15 MR. O'CALLAGHAN: Just for clarity, Jim,  
16 whether the transcripts were appended on the draft  
17 report provided on the 22nd?

18 BY MR. PORTNOY:

19 Q The question was whether it was appropriate  
20 for Secretary -- whether Secretary Bentsen, in  
21 developing an understanding of the draft report which  
22 you've just testified it was appropriate for him to

1 receive, also would have needed access to the  
2 deposition transcripts.

3 A It's possible that if he read the draft  
4 report and needed additional information with regard  
5 to any of the statements in the draft report, that he  
6 would have to ask the Inspector General to clarify  
7 and elaborate upon certain information. And I  
8 suppose then the Inspector General would probably  
9 have taken the transcript and looked at it and  
10 provided him with additional information as  
11 requested. Is that answering your question?

12 Q I'm not sure if it is, sir. It was  
13 appropriate for Secretary Bentsen to get a draft copy  
14 of your report on the 22nd of July?

15 A I think that's true, yes.

16 Q And the deposition transcripts were, in  
17 your judgment, an integral part of your report?

18 A They were the basis for the report and  
19 ultimately were included in the final report so that  
20 anyone who wanted to look at exactly what was said  
21 and whether or not we had extracted the appropriate  
22 information from the interviews to put in our report,

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1 they would have that information.

2 Q Would it be fair to say that they were, the  
3 deposition transcripts were an integral part of your  
4 report?

5 A When it was finally released, I think it  
6 would be fair to say that they were an integral part  
7 of the report. I think, in fact, they were bound in  
8 perhaps four volumes as a four-volume report with all  
9 the transcripts, yes.

10 Q So would it have been appropriate for  
11 Secretary Bentsen to review the deposition  
12 transcripts in connection with his review of the  
13 draft report?

14 A I suppose it would be logical for him to  
15 be -- if he wanted to get beyond the substance of the  
16 draft report itself and into the details, that he  
17 would be permitted to look at the transcripts.

18 Unfortunately, at the point he received the  
19 draft report, the transcripts themselves had not been  
20 redacted for information that RTC considered  
21 sensitive.

22 Q Was there RTC information that was so

1 sensitive that Secretary Bentsen couldn't have access  
2 to it?

3 A Well, I think there was. I mean, in the  
4 sense that it would be information that involved  
5 criminal referrals that's not releasable to anyone  
6 outside the RTC.

7 Q Are you aware that the Secretary of the  
8 Treasury is also the chairman of the RTC oversight  
9 board?

10 A Very much so. Of course, the oversight  
11 board is prohibited by law from getting involved in  
12 the details of the operations of the RTC and so  
13 that's sort of a balance there that has to be  
14 considered. He is the chairman of the oversight  
15 board, but the oversight board is not permitted to  
16 get involved in the details of RTC's operations. So  
17 that would seem to limit perhaps what he could do.  
18 It's really sort of a vague area, a gray area.

19 (Discussion off the record.)

20 BY MR. PORTNOY:

21 Q Your report was created at the request of  
22 Secretary Bentsen, was it not?

1 A Yes.

2 Q And Secretary Bentsen was the official who  
3 was going to have to take managerial action as a  
4 consequence of your report?

5 A That's correct.

6 Q Is it then your testimony that Secretary  
7 Bentsen should not have received access to all the  
8 information developed in your report?

9 A I think he should have been able to look at  
10 the transcripts, preferably in a redacted version,  
11 with the information on the criminal referrals  
12 redacted. But obviously he would, if he needed to go  
13 beyond the report and into the transcripts, I think  
14 certainly that was appropriate provided of course  
15 that the criminal referral material could have been  
16 redacted for the protection of the RTC and so forth.

17 Q Have you ever briefed an official other  
18 than the CEO of the RTC with respect to an ongoing  
19 investigation, a designee of the CEO?

20 A Have I?

21 Q Or has your office.

22 A I'm sure that my office has. Particularly



1 if -- let's take an example that someone is -- let's  
2 keep it at a small, low level -- someone is cheating  
3 on time and attendance or something like that or  
4 stealing. I think more people might go to the  
5 supervisor of that person and advise them what's  
6 going on.

7 Q Let me try to lay it out again more  
8 specifically for you, sir. You testified that you  
9 will brief the CEO of the RTC with respect to an  
10 ongoing investigation if he requests that you do so?

11 A Yes.

12 Q If he requested that you brief his special  
13 assistant, would you do that?

14 A In order that the special assistant might  
15 provide the information to the CEO?

16 Q Exactly.

17 A Well, we've never had that happen. I don't  
18 know what we would do in a case like that. I suppose  
19 we would if the special assistant was in no way  
20 involved with the investigation.

21 Q So as a general proposition, it's  
22 appropriate for a high-ranking official who has a lot

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1 of responsibilities to ask somebody else to assist  
2 him in discharging his responsibilities with respect  
3 to an investigation?

4 A Well, it's never really happened with our  
5 office and our agency head. We've never briefed  
6 anyone other than the agency head on an  
7 investigation. And I think it would have to be  
8 something relatively minor before we would go below  
9 the level of the head of the agency and provide that  
10 information to an assistant. I think if the head of  
11 the agency wanted the briefing, I would go directly  
12 to him and give the briefing, but I can't picture  
13 going to someone other than the head of the agency  
14 and doing that.

15 I suppose it's theoretically possible, if  
16 that's what you're asking could that happen, but if I  
17 were asked to do that I would certainly want to talk  
18 to the head of the agency and say I prefer to brief  
19 you personally on this and work from that  
20 perspective.

21 Q I don't want to put too fine a point on  
22 this, but if the CEO of the RTC asked you to brief

1 his special assistant or his executive secretary, if  
2 there is such a position at the RTC, or one of his  
3 senior advisers on his behalf with respect to an  
4 ongoing investigation, would you do so?

5 MR. O'CALLAGHAN: Jim, I don't want to --  
6 this is about the fourth time you've asked this  
7 question. If you just explain how it fits in the  
8 scope and why you need to ask it four times.

9 MR. PORTNOY: I'd like to get an answer and  
10 then we can move on.

11 MR. O'CALLAGHAN: I'd like to hear the  
12 scope rationale before the question is answered.

13 MR. PORTNOY: I'd like the witness's  
14 response before I respond to you.

15 MR. O'CALLAGHAN: No, I'd like you to  
16 answer the scope before the witness answers.

17 MR. PORTNOY: I'm not going to, so.

18 MR. O'CALLAGHAN: If it's not -- you are  
19 refusing to give me an explanation how this falls  
20 within the scope of the resolution.

21 MR. PORTNOY: I will be pleased to do so  
22 after the witness answers the question.

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1 MR. O'CALLAGHAN: No, Jim, you have to give  
2 me a rationale for how it falls in the scope before  
3 the answer is elicited. The whole reason I'm  
4 bringing up the question of scope is whether or not  
5 it's necessary to have this witness answer the  
6 question. It's outside the scope of the resolution.

7 MR. PORTNOY: Let's go off the record.  
8 (Discussion off the record.)

9 MR. PORTNOY: In deference to  
10 Mr. O'Callaghan's objection, the basis for my  
11 question is to explore Mr. Adair's understanding of  
12 what information it is appropriate for an Inspector  
13 General's office to convey to the chief executive  
14 officer of that Inspector General's office's agency  
15 or the designees of that chief executive officer.

16 MR. O'CALLAGHAN: You're getting at his  
17 understanding.

18 MR. PORTNOY: That's correct.

19 MR. O'CALLAGHAN: Okay.

20 THE WITNESS: So I would say that, first of  
21 all, I can't recall any situation where the head of  
22 the agency has asked me, bear with me on this, to

1 handle a briefing of an investigation at a lower  
2 level. And you know my background is not as an  
3 investigator but as an auditor and so forth. And my  
4 general reaction to these types of questions is to go  
5 to the chief investigator Clark Blight and say,  
6 Clark, is this appropriate based on your experience  
7 that we handle a matter this way or would this be  
8 inappropriate.

9 I can see that hypothetically or  
10 hypothetically speaking, if the head of the agency  
11 asked me to brief someone at a somewhat lower level  
12 on a matter where he had designated that person to be  
13 the action officer and so forth, that there could be  
14 instances where we would be willing to do that. And  
15 conceivably there would be instances where we would  
16 prefer to brief only the head of the agency because  
17 we don't -- so the answer is it would sort of depend  
18 on the case and -- but hypothetically speaking, it is  
19 conceivable that you could do that, I suppose.

20 BY MR. PORTNOY:

21 Q So on a case-by-case basis it might be  
22 appropriate to provide information to the designee of

1 the Secretary on behalf of the Secretary?

2 A Yes, you are talking now Treasury, which is  
3 a little bit different organization because we don't  
4 have a secretary. But one could see how a very busy  
5 Secretary might designate this to someone at just a  
6 little bit below that level and we don't know how the  
7 Treasury operates, but conceivably that could happen.

8 Q And it might be appropriate?

9 A It might be. On a case-by-case basis, it  
10 might be.

11 Q You testified earlier that the relationship  
12 between your office and Treasury Inspector General's  
13 office was not entirely defined, but that you viewed  
14 yourself as, I believe the word you used was  
15 assisting the Treasury Inspector General's office?

16 A That was the word that was in the letter to  
17 us or the memo to us from Jack Ryan asking if we  
18 would assist the Treasury IG office in this  
19 investigation. So I mean that I think that's clearly  
20 the position we were in where Government Ethics  
21 needed the Treasury IG in order to conduct the  
22 investigation and yet, since there were RTC people

1 involved, it was decided that the IG from the RTC  
2 also had to be involved for that reason. And so I  
3 think if someone had to lead and someone was  
4 assisting then the lead would be Treasury and the  
5 assist would be RTC IG, yes.

6 Q And the Treasury Inspector General's office  
7 became involved at least indirectly by request from  
8 Secretary Bentsen; is that your understanding?

9 A Well, really, by request of the government  
10 ethics to Secretary Bentsen that said we would need  
11 your Office of Inspector General to assist because we  
12 don't have investigators here at OGE.

13 Q OGE asked Secretary Bentsen to ask the  
14 Treasury Inspector General to assist them?

15 A I suspect that must be how it worked out,  
16 yes. I think I've seen a letter from OGE to Bentsen  
17 saying I'm going to need your IG and probably the IG  
18 from RTC to do that.

19 Q And Secretary Bentsen asked the CEO of the  
20 RTC?

21 A To ask us to assist. That's right.

22 Q So, at least your direct involvement in

1 this investigation was as a result of a request from  
2 Secretary Bentsen?

3 A Yes, it is a letter from Bentsen to Ryan  
4 asking for our assistance which I think was generated  
5 by the OGE saying they needed IG assistance.

6 Q Did you view yourself in any respect as  
7 working for Secretary Bentsen in this matter?

8 A In the sense that we were trying to produce  
9 a report that he could use, that OGE could use to  
10 provide information to Secretary Bentsen to make a  
11 decision, then I suppose certainly we were working  
12 for Secretary Bentsen.

13 Q You testified that in early June Pat Black  
14 raised concerns with you regarding Francine Kerner's  
15 role in the investigation?

16 A Yes.

17 Q And that you offered in a subsequent phone  
18 call with Mr. Cesca to make Ms. Black available to  
19 him as a temporary counsel?

20 A Well, yes, to him and to myself. In other  
21 words, that she would be the counsel for the entire  
22 investigation and that perhaps Francine should be,

1 shouldn't be involved, yes.

2 Q Do you view Ms. Black as an important part  
3 of your staff?

4 A Yes.

5 Q You rely on her a great deal?

6 A Yes.

7 Q How would you have felt about being asked  
8 to relinquish your services in connection with an  
9 important investigation?

10 A I certainly understand that Mr. Cesca would  
11 want to keep someone he had worked with and relied  
12 upon involved, and certainly he did not know Patricia  
13 Black at this point so it would probably be a  
14 difficult decision for him to make to not include  
15 Francine. However, I was trying to point out to him  
16 how this could be perceived by others and that it  
17 might be in his best interest to keep Francine out of  
18 it, and that counsel could be provided from a person  
19 in my office.

20 Q Earlier, Mr. O'Callaghan showed you a June  
21 27th memorandum from Mr. Cesca to the general counsel  
22 of the Treasury which has previously been described

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1 in testimony as a firewall memorandum or a Chinese  
2 Wall memorandum, in some fashion separating  
3 Ms. Kerner from the Office of General Counsel for the  
4 purpose of the investigation?

5 MR. O'CALLAGHAN: Or attempting to.

6 MR. PORTNOY: Okay.

7 THE WITNESS: Yes.

8 BY MR. PORTNOY:

9 Q You didn't draft the memorandum certainly?

10 A No.

11 Q Did you see it before it was put in final  
12 form?

13 A No.

14 Q Were you consulted on its contents or  
15 terms?

16 A Not that I recall. I don't think so.

17 Q So you're not really in a position to make  
18 a judgment as to whether its terms were complied  
19 with, are you, sir?

20 A The terms in the sense that she would, the  
21 counsel would not be providing information to the  
22 Office of General Counsel and that she would be



1 rated, in part with input from Mr. Cesca, whether  
2 they were complied with; is your question do I, am I  
3 in a position to determine whether the terms were  
4 complied with?

5 Q Or met.

6 A Or met? I did not know at the time of the  
7 investigation whether the terms were being complied  
8 with.

9 Q So any judgment you would draw with respect  
10 to comply with the memorandum would simply be based  
11 on your reading of the memorandum?

12 A Yes. And any information that we learned  
13 about subsequent to the investigation that would  
14 indicate that perhaps Francine had not complied with  
15 the terms of the memorandum and was in fact providing  
16 information to the general counsel's office, that  
17 would be my only basis.

18 Q You might bring factual knowledge to your  
19 analysis, but I believe you testified that your only  
20 knowledge of the terms or conditions imposed by the  
21 memorandum were derived from the language from the  
22 memorandum?

1 A As opposed to what, as opposed to providing  
2 input or --

3 Q Yes.

4 A Yes, I have no recollection of providing  
5 any input into this other than the input of the phone  
6 call to Mr. Cesca saying that this could be a  
7 problem, the fact that she worked for the general  
8 counsel's office and the investigation was involving  
9 the general counsel. And whether that had any impact  
10 on Mr. Cesca in terms of having him come up with this  
11 memorandum to try and put a firewall, as you said, in  
12 place, I'm not sure.

13 Q Did you view the memorandum as a good faith  
14 effort by Mr. Cesca to address your difficulties?

15 A I guess I did view it as an attempt on his  
16 part or as a recognition on his part that there could  
17 be an appearance problem with having Francine Kerner  
18 involved, and that he was attempting to solve that  
19 problem by making it clear to not only Francine but  
20 the general counsel's office that there shouldn't be  
21 discussion between the two about this investigation.  
22 So in that sense, it looked like an attempt to solve

1 the problem on his part. Perhaps a good faith  
2 effort. I had no reason to doubt that it was not a  
3 good faith effort.

4 Q You indicated that Ms. Black told you that  
5 the Office of Government Ethics also expressed some  
6 concern about Ms. Kerner's role?

7 A Yes.

8 Q Do you recall when that was, more  
9 specifically, sir, was it before the memorandum was  
10 drafted?

11 A I know she told me at some point that the  
12 Office of Government Ethics was going to contact  
13 Mr. Cesca about this issue of Francine Kerner, but  
14 I'm not exactly sure when that occurred. I  
15 believe -- well, I'm not exactly sure when she told  
16 me, whether it was before or after.

17 Q I believe you suggested, sir, that it might  
18 have been before you called Mr. Cesca?

19 A It may well have been because we had  
20 discussed this issue between Ms. Black and myself,  
21 and she had met with I believe Jane Ley at the  
22 government ethics office, and I believe they had

1 discussed the fact that Francine was working in the  
2 general counsel's office. And I believe Jane Ley had  
3 indicated to her that that was something that perhaps  
4 she needed to call Bob Cesca about and discuss it,  
5 and that's my, that's basically my recollection.  
6 Probably before I made the call to Mr. Cesca that  
7 Ms. Black would have indicated to me that Ethics also  
8 was having a problem with this arrangement.

9 Q Do you recall ever being told that OGE had  
10 a problem with the arrangement after the memorandum  
11 was drafted?

12 A I do not recall hearing that, no.

13 Q You testified earlier about a meeting held  
14 on July 5th?

15 A Yes.

16 Q During that meeting there was discussion of  
17 the provision of materials to the investigators by  
18 the White House and also of White House access to  
19 materials developed by the investigators?

20 A Yes.

21 Q Was it ever your view that an agreement was  
22 reached or a quid pro quo was reached whereby the

1 White House would provide documents and witnesses to  
2 you and you would provide information to the White  
3 House in return?

4 A Information in the form of interviews and  
5 so forth?

6 Q In any form.

7 A No, it was never my view that we had  
8 reached that agreement.

9 Q And, in fact, you declined to permit White  
10 House counsel to sit in on your interviews, did you  
11 not?

12 A We did that through counsel Patricia Black  
13 in her meeting with Jane Sherburne and Francine  
14 Kerner.

15 MR. O'CALLAGHAN: Just for clarity, we did  
16 not come to the agreement you are talking about, the  
17 quid pro quo and I just wanted to --

18 THE WITNESS: Which "we" is it? "We" as  
19 the RTC --

20 MR. O'CALLAGHAN: Your answer was we didn't  
21 get involved in an agreement like that. I just  
22 wanted you to identify who "we" was.

1 BY MR. PORTNOY:

2 Q To your knowledge, did anybody make such an  
3 agreement?

4 A That we would provide transcripts and so  
5 forth to the White House in exchange for making  
6 witnesses available? To my knowledge, we, the RTC,  
7 had not agreed to that at all, and I don't believe  
8 the Treasury IG had agreed to it either. And it was  
9 determined that the two counsels from our respective  
10 offices would meet with the White House counsel and  
11 advise them, you know, of our feelings on the matter,  
12 which they did that afternoon.

13 Q And I believe you testified that you told  
14 the White House counsel's office that they could not  
15 sit in on your depositions?

16 A That was what my counsel passed along to  
17 their counsel, yes.

18 Q And also that you did not intend to provide  
19 them with the deposition transcripts?

20 A That is what my counsel advised them, yes.

21 Q And this occurred on the 5th of July?

22 A Yes.

1 Q On the 6th of July, the White House  
2 counsel's office provided you with documents  
3 pertinent to your investigation, did they not?

4 A Yes, a letter from Mr. Cutler saying we  
5 will provide you with the documents, yes.

6 Q And so the White House provided the  
7 documents after you told them that you weren't going  
8 to provide deposition transcripts or permit them to  
9 sit in?

10 A That's right, yes.

11 Q So it's pretty clear that the White House  
12 didn't see a quid pro quo either, isn't it?

13 MR. O'CALLAGHAN: You are asking him to  
14 make a judgment as to someone else's -- what their  
15 thought process. If you put it in his understanding  
16 then it's okay, but otherwise --

17 THE WITNESS: My interpretation, if I may  
18 give my interpretation, of receiving the letter on  
19 the 6th and not receiving anything in the way of a  
20 phone call from the White House counsel, coupled with  
21 the fact that they did not sit in on the interviews,  
22 was that they had agreed that they would provide

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1 witnesses and documents, but we were not going to  
2 allow them to sit in on interviews and we were not  
3 going to provide transcripts. That was my  
4 interpretation.

5 (Pause.)

6 BY MR. PORTNOY:

7 Q You testified, sir, that the White House  
8 decision to provide you with documents  
9 notwithstanding Ms. Black's declination to allow the  
10 White House to sit in on interviews or provide  
11 depositions was interpreted by you as White House  
12 acquiescence in Ms. Black's --

13 A Along with two others things, the fact that  
14 there was no phone call to me from Ms. Sherburne as  
15 was indicated by Ms. Black might occur if this got  
16 escalated up to Mr. Cutler and he said wait a minute,  
17 we can't live with that arrangement, I'm going to  
18 call the IG and tell him so. There was no such phone  
19 call to me made and there was no White House  
20 personnel sitting in on the interviews as they had  
21 requested. And I was assuming the third leg which  
22 was the transcript provision, would also be agreed

1 to.

2 Q No one at the White House ever told you  
3 that they agreed not to seek transcripts?

4 A No one ever told me that from the White  
5 House, no.

6 Q Your understanding of the White House's  
7 reaction came from Ms. Black primarily?

8 A Yes.

9 Q I would ask you, sir, to look at document  
10 Bates stamped 006272, which is the July 6th, 1994  
11 letter from Mr. Cutler to you and Mr. Cesca that was  
12 referred to earlier. And I would just ask you to  
13 confirm for me, sir, that the letter makes no mention  
14 whatsoever of White House witnesses or deposition  
15 transcripts?

16 A This appears to be in -- well, it states it  
17 is in response to our July 1st letter regarding  
18 documents saying that they will provide documents and  
19 asking us to handle the documents with care. It does  
20 not talk about witnesses.

21 Q This is the letter that accompanied the  
22 documents, is it not, sir?

1 A Yes, I believe it is.

2 Q And it was the provision of the documents  
3 in part that led you to believe that the White House  
4 had acquiesced, in your view, that they should not  
5 seek deposition transcripts?

6 A They certainly led me to believe they were  
7 cooperating with the investigation fully and it was  
8 more the sense, I believe, that they were not sitting  
9 in on the interviews that led me to believe that the  
10 other part about the transcripts was also resolved  
11 favorably. But this was an indication of cooperation  
12 on the part of the White House.

13 Q But it doesn't say anything about not  
14 seeking deposition transcripts?

15 A It does not.

16 Q So that was your interpretation of events?

17 A Yes, putting it all together, yes.

18 Q You indicated earlier that the deposition  
19 transcripts were an important part of the report that  
20 your office played a role in developing?

21 A I think that's right, yes.

22 Q Did you always anticipate the deposition



1 transcripts would become public?

2 A I believe so. I believe the thinking was  
3 that the report, the final report could contain the  
4 depositions as appendices in redacted form.

5 Q And, in fact, the depositions were released  
6 to the public on July 30th, I believe in connection  
7 with the OGE report?

8 A I believe that may be so. They were  
9 certainly part of the report provided to OGE on the  
10 29th, and I'm not sure exactly when they were  
11 released to the public. I know there was some  
12 requests from the Hill for information, but whenever  
13 the report was made public, certainly the depositions  
14 were a part of it, the redacted depositions were.

15 Q Were you aware that the Office of  
16 Government Ethics received copies of the depositions  
17 during the course of your investigation?

18 A I know they got the draft report on the  
19 22nd. I guess I'm not aware that they received the  
20 transcripts. Are you asking me if they did or am I  
21 aware that they did?

22 Q I'm asking if you are aware whether they

1 received the transcripts during the course of the  
2 investigation.

3 A I'm not sure. I'm not sure at this point.  
4 I don't know if I need to check with counsel or not.

5 MR. O'CALLAGHAN: You are asking him.

6 BY MR. PORTNOY:

7 Q That's fine. We don't need counsel's  
8 recollection. Yours will be fine. The depositions  
9 weren't redacted until July 28th or 29th; is that  
10 correct?

11 A Right. That's correct.

12 Q So if OGE got deposition transcripts --

13 A They would have been unredacted, that's  
14 correct.

15 Q And if your office was aware that OGE had  
16 received deposition transcripts, your office  
17 necessarily would have been aware that OGE received  
18 unredacted transcripts?

19 A I think that would be true.

20 Q To your knowledge, did anybody ever raise  
21 the subject of redacting transcripts before providing  
22 them to OGE?

1 A Are we saying they were provided? I mean,  
2 is it a fact they were provided here? Because I  
3 wasn't aware that they were. I can't recall that  
4 subject coming up, no.

5 Q Did OGE receive a draft of your report?

6 A Yes.

7 Q Did it receive transcripts in connection  
8 with that draft report?

9 A That's what I'm having trouble remembering,  
10 whether they received the transcripts as well.

11 MR. O'CALLAGHAN: Can you refresh his  
12 recollection with anything?

13 THE WITNESS: Do you have anything that  
14 might refresh, a memorandum that says here is the  
15 report and the transcripts or something?

16 MR. PORTNOY: Let's go off the record.

17 (Discussion off the record.)

18 BY MR. PORTNOY:

19 Q I believe you consulted with counsel while  
20 we were off the record?

21 A Yes, and counsel advises that the Office of  
22 Government Ethics had requested, we believe around

1 the 18th of July, that we begin providing them with  
2 transcripts so that they wouldn't have all the  
3 volumes of transcripts provided to them at once at  
4 the end of the review. And our understanding is that  
5 we in fact did then provide them with transcripts.

6 Q I'd like to show you a document, sir,  
7 numbered 025070, which is an E-mail from Lou Sherman  
8 to Patricia Black regarding copies for Jane Ley.  
9 It's dated July 13th, 1994.

10 A Okay. So we --

11 Q Does this document in any way refresh your  
12 recollection as to whether your office provided  
13 copies of the deposition transcripts to the Office of  
14 Government Ethics?

15 A Yes, this indicates that on July 13th we'd  
16 been asked to make copies of transcripts and provide  
17 them to Jane Ley at OGE.

18 MR. O'CALLAGHAN: But you don't have a  
19 recollection; right?

20 THE WITNESS: No. I mean, I'm not copied  
21 on this and obviously this is something that was  
22 done -- counsel advises that it was provided -- we

1 provided the transcripts.

2 BY MR. PORTNOY:

3 Q Well, then, sir, here is a second E-mail  
4 dated 025071 from Ms. Black to you that I believe  
5 also indicates that Ms. Ley was receiving the  
6 transcripts as of July 13th.

7 A It sure does. That is correct. So I'm now  
8 refreshed as to the fact that Jane Ley had asked to  
9 look at transcripts as we did them and we would get  
10 them to her.

11 Q To your knowledge, sir, did anybody raise  
12 the subject of redacting transcripts before providing  
13 them to Ms. Ley or OGE?

14 A No, not to my knowledge.

15 Q Why, sir, would it be appropriate to give  
16 unredacted copies to Ms. Ley in OGE but not to give  
17 them to Secretary Bentsen?

18 A Well, I don't know that it would be  
19 appropriate. I think they probably should have been  
20 redacted before they went to OGE. And I guess that  
21 is something we'd have to ask our counsel, who was  
22 basically in charge of the idea -- the area of

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1 redacting documents as to -- well, I guess she's  
2 already been up here. I don't know whether it's been  
3 asked of her or not.

4 Q So in your view, if it's inappropriate to  
5 provide unredacted transcripts to Secretary Bentsen,  
6 it's also inappropriate to provide them to OGE?

7 A It would have been my preference then that  
8 OGE not -- you know, that copies be redacted before  
9 we provided them to anyone. It looks like we did not  
10 do that here.

11 Q Would the converse also be true? If it was  
12 appropriate to provide unredacted transcripts to OGE,  
13 would it have been appropriate to provide them to  
14 Secretary Bentsen?

15 A It's probably not appropriate to provide  
16 either one with the unredacted copies. I guess the  
17 two wrongs are not going to make a right here. It's  
18 preferable that neither OGE or the Secretary of the  
19 Treasury not be given these unredacted materials.

20 Q Are you aware, sir, that witnesses were  
21 provided of copies of their own transcripts?

22 A Yes, in order to ascertain whether they

1 were correct or whether corrections were needed.

2 Yes. I think that was the 18th. I think that was  
3 the date sticking in our minds rather than 13th. So  
4 they were given -- they were given the transcripts.

5 Q Was there any legal limit on what witnesses  
6 could do with their transcripts once they received  
7 them?

8 THE WITNESS: Let me ask counsel here. Can  
9 I go off the record here for a second?

10 MR. PORTNOY: Sure.

11 (Discussion off the record.)

12 MR. PORTNOY: Let me clarify for the record  
13 that I'm not asking Mr. Adair for his legal opinion,  
14 but rather I'm asking whether he's aware of any legal  
15 impediment that was imposed by his office on the  
16 release of transcripts by witnesses.

17 MR. GIBSON: Can we go off the record?

18 (Discussion off the record.)

19 BY MR. PORTNOY:

20 Q In deference to counsel's concern, did your  
21 office have a preference with respect to whether  
22 witnesses maintain the confidentiality of these

1 transcripts?

2 A Yes, I believe we asked that they keep the  
3 material confidential, but we had no way of enforcing  
4 what they did with the transcripts once we returned  
5 them to them.

6 Q So once the transcripts were provided to  
7 the witnesses, the witnesses were, to the best of  
8 your knowledge, free to disseminate the transcripts  
9 as they chose?

10 A I would say we had no way of preventing  
11 them from doing what they wanted with the  
12 transcripts, yes.

13 Q So in effect those transcripts were  
14 available to the public in some fashion as of the  
15 18th of July?

16 A To the public? Well, I don't think we  
17 viewed it that way at all, that people would release  
18 transcripts of what they had said to the public. I  
19 guess theoretically if someone wanted to take a  
20 transcript and hand it to -- their own transcript it  
21 would be no different, I suppose, than them going  
22 public and making statements, the same statements

1 they had made to us to the public.

2 Q They could have given their transcript to  
3 their lawyer certainly?

4 A Yes.

5 Q They could have given it to a newspaper if  
6 they chose?

7 A I suppose that's true that we couldn't  
8 prevent them from -- legally couldn't prevent them  
9 from handing it to a newspaper or whoever they wanted  
10 to.

11 Q And, in fact, they could have given it to  
12 another witness had they chosen to, couldn't they?

13 A They could have.

14 Q I take it nobody raised the issue of  
15 redacting transcripts before providing them to  
16 witnesses for verification?

17 A Well, I mean -- no, they did not, because  
18 basically you'd be asking people who may have  
19 provided material that was needed to be redacted and  
20 blacking out the information that they had given to  
21 you, which I guess didn't make any sense.

22 Q As of the 23rd of July, had you ever raised

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1 the subject of redaction of transcripts with  
2 Mr. Cesca or anyone else at the Treasury Department  
3 or the Treasury Inspector General's office?

4 A I had not.

5 Q To your knowledge, had anybody done so?

6 A I don't know.

7 Q Mr. O'Callaghan showed you the document  
8 which was a fax transmission from Mr. Blight to  
9 Mr. Cottos containing suggestions regarding the draft  
10 report, do you recall that?

11 A Wasn't it -- was it from Mr. Cottos to  
12 Mr. Blight?

13 Q I'm sorry, you are correct. From  
14 Mr. Cottos to Mr. Blight.

15 A Yes, he did.

16 Q You characterized the contents of the  
17 attachment to the cover page as being suggestions?

18 A Yes, in my view.

19 Q And to be clear, sir, did anybody ever put  
20 any pressure on you or anyone in your office to  
21 accept a suggested change?

22 A No one pressured me personally. I believe



1 that my agents would not accept a change that they  
2 didn't think was appropriate.

3 Q So would it be fair to say that the final  
4 product was the work of your office in the Treasury  
5 Inspector General's office and the Office of  
6 Government Ethics irrespective of any suggestions  
7 that came from elsewhere?

8 A I think the office of Treasury IG and my  
9 office, it was basically our decision as to what went  
10 into the report, and what came to us from Government  
11 Ethics and what came to us in the memo from  
12 Mr. Cottos I view as suggestions which we might or  
13 might not accept.

14 Q So you wouldn't view those suggestions as  
15 tainting your report in any way?

16 A I would not.

17 Q Mr. O'Callaghan also showed you a  
18 memorandum from a Mr. Rittling to a Mr. Schmalzbach?

19 A Yes.

20 Q You indicated you'd never seen that memo  
21 before?

22 A Yes, that's right.

1 Q In describing Mr. Schmalzbach, I believe  
2 you testified that Mr. Schmalzbach was Francine  
3 Kerner's boss?

4 A Yes.

5 Q Is that your understanding?

6 A That's my understanding. I don't exactly  
7 know the hierarchy of the Treasury general counsel's  
8 office, but my understanding is that he was in fact  
9 her boss, that she reported to him.

10 Q Did Ms. Kerner ever say that to you?

11 A I don't believe she did, no.

12 Q Did Mr. Schmalzbach ever say that to you?

13 A No, he did not.

14 Q So you don't really know if that's the  
15 case; it's your understanding?

16 A Yes, that's right.

17 Q Mr. Schmalz -- excuse me. Mr. O'Callaghan  
18 also showed you an E-mail message from  
19 Mr. Schmalzbach to Mr. Knight?

20 A Yes.

21 Q You indicated you had not seen it before,  
22 but you thought that Pat Black had seen it before?

1 A Yes, correct.

2 Q Do you have any idea how Ms. Black would  
3 have seen an internal Treasury Department E-mail?

4 A Yes.

5 Q How is that?

6 MR. O'CALLAGHAN: He already testified to  
7 that.

8 THE WITNESS: I believe that she saw it as  
9 part of the investigation being conducted by the  
10 independent counsel's office.

11 MR. GIBSON: If you don't mind, can I ask a  
12 couple of clarifying questions on that last point?

13 MR. PORTNOY: With respect to the  
14 independent counsel?

15 MR. GIBSON: With respect to the  
16 independent counsel.

17 MR. PORTNOY: If you'd like to.

18 MR. GIBSON: This will just be brief.

19 You testified that Pat Black believed she  
20 saw it as a part in the investigation by the  
21 independent counsel. Was she involved in any way of  
22 assisting or conducting the investigation with the

1 independent counsel or was she shown that document as  
2 a fact witness to something else?

3 THE WITNESS: She was shown the document as  
4 a fact witness.

5 BY MR. PORTNOY:

6 Q To your knowledge, is that the only time  
7 that Ms. Black has seen the document?

8 A To my knowledge that is the only time she's  
9 seen the document, yes. Oh, wait -- yes, that's  
10 correct.

11 Q Were you aware that the White House chief  
12 of staff, Mr. McLarty, had asked Mr. Cutler to  
13 conduct an investigation into the White  
14 House-Treasury contacts that were the subject of your  
15 investigation?

16 A I was aware that Mr. Cutler was looking  
17 into this matter for the White House. I'm not sure I  
18 knew Mr. McLarty had asked him to do that. And I  
19 believe I knew he was doing it.

20 Q You were aware, though, that Mr. Cutler was  
21 conducting an investigation of the White  
22 House-Treasury contacts from the White House

1 perspective?

2 A Yes, I believe I was.

3 Q And your investigation concerned the White  
4 House-Treasury contacts from essentially the Treasury  
5 perspective or the RTC perspective?

6 A Well, I guess trying to get everyone's  
7 perspective in the full picture of it, yes.

8 Q Did you view Mr. Cutler's investigation as  
9 legitimate and proper?

10 A Yes.

11 Q Would it be your view that the White House  
12 should have investigated the White House-Treasury  
13 contacts?

14 A Yes.

15 Q Was it appropriate for the White House to  
16 seek all available information in connection with  
17 that investigation?

18 A Yes.

19 Q So, in your view, was it appropriate for  
20 the White House to seek access to the information  
21 developed during your investigation?

22 A Yes, I didn't think it was inappropriate

1 what they were asking, but it was certainly -- it was  
2 something that we simply could not comply with.

3 Q For your internal reasons?

4 A Yes, because of the way we conduct  
5 investigations to be consistent with how we conduct  
6 investigations.

7 Q Was it your view or is it your view that it  
8 was appropriate for the White House to seek access to  
9 unredacted transcripts?

10 A No, I don't think that would be  
11 appropriate. The unredacted transcripts contained  
12 information about the criminal referrals, which  
13 basically was the reason we were conducting the  
14 investigation in the first place, to see whether any  
15 of that information had been provided by the Treasury  
16 to the White House. And so for them to be seeking  
17 unredacted transcripts that might contain that  
18 information, I have a problem with that being  
19 appropriate.

20 Q But at the time the White House received  
21 the transcripts there had been no redaction, had  
22 there?

1 A There had not.

2 Q And, to your knowledge, there had been no  
3 discussion of redaction?

4 A To my knowledge, between our office and the  
5 Treasury -- and the Treasury IG office, I know I had  
6 not discussed it, but I don't know whether anyone in  
7 my office had discussed it with Treasury IG.

8 Q Are you aware of anyone having raised the  
9 subject of redacting the transcripts prior to July  
10 23rd?

11 A I'm not.

12 Q So the White House wasn't presented with an  
13 option of seeking redacted or unredacted transcripts?

14 A I don't know what they were presented with  
15 by way of an option.

16 Q No redacted transcripts existed?

17 A That is correct.

18 Q Sir, do you have any reason to believe that  
19 the White House or anyone in the White House made  
20 improper use of any of the material in the deposition  
21 transcripts?

22 A I don't know what they -- what use they

1 made of the material, so I have no reason to believe  
2 that they did.

3 Q Do you have any reason to believe that  
4 anyone at the Treasury Department made any improper  
5 use of either the draft report that was provided to  
6 Secretary Bentsen or the deposition transcripts?

7 A Again, I don't know what use was made of  
8 that within Treasury, so I do not.

9 Q Are you aware of any detrimental effect on  
10 your investigation as a consequence of the release of  
11 the deposition transcripts to the White House?

12 A No, I don't think we -- there's any way  
13 we -- well, we're not aware of anything, and I'm not  
14 sure we could be aware. It's something that could  
15 occur and we wouldn't even be aware of it. We're not  
16 aware.

17 Q Are you aware of any detrimental effect on  
18 your investigation by the release of the draft report  
19 to Secretary Bentsen on July 22nd or the release of  
20 the deposition transcripts to the Treasury Secretary?

21 A I guess I'm not aware, no.

22 MR. PORTNOY: That's all I have, sir.

1 Thank you.

2 EXAMINATION

3 BY MR. O'CALLAGHAN:

4 Q Okay. I have a few follow-up questions.  
5 I'll try to be brief, sir.

6 Mr. Portnoy just asked you -- actually, let  
7 me withdraw that.

8 On July 23rd when the unredacted  
9 transcripts went over to the White House, did they  
10 contain confidential RTC information relating to  
11 Madison Guaranty Savings & Loan Association or  
12 Whitewater Development Corporation?

13 A Yes.

14 Q And Mr. Portnoy asked you if on July 23rd  
15 there were any redacted copies of the transcripts  
16 that existed and you said no, right, at that time?

17 A Not to my knowledge. I don't believe there  
18 were.

19 Q Had there been any reason to redact  
20 transcripts on July 23rd, by July 23rd?

21 A No. My counsel, it was her intention to  
22 redact before the final report was prepared and we

1 hadn't reached that stage.

2 Q This is the same counsel that had told the  
3 White House that they couldn't have transcripts; is  
4 that right?

5 A Yes.

6 Q If you'd been advised on July 23rd that the  
7 transcripts were going over to the White House  
8 unredacted, might that have sparked discussions about  
9 redactions?

10 A Well, had I been advised, yes, I would  
11 have -- my procedure would have been to contact my  
12 counsel and the issue of redaction, I think at that  
13 point would have been raised and, of course, the  
14 entire issue of whether the transcripts should be  
15 sent to the White House would also have been  
16 discussed. But we were not -- we were not consulted  
17 on that.

18 Q You were asked earlier how you knew or  
19 whether or not you knew Ken Schmalzbach was Francine  
20 Kerner's boss?

21 A Right.

22 Q How did you come to that conclusion?



1 A I believe I was told that by my counsel,  
2 Patricia Black.

3 Q Did she give you a reason for why she  
4 thought that was the case?

5 A I think that is something that she believed  
6 was a fact and had mentioned it in the course of  
7 conversations.

8 Q Did she have a lot of contact with  
9 Ms. Kerner?

10 A Yes, she had counsel-to-counsel contact  
11 during that particular investigation.

12 Q During the investigation probably on a  
13 daily basis?

14 A Probably pretty close to daily, yes.

15 Q Okay. And Mr. Cottos -- excuse me,  
16 Mr. Portnoy asked you earlier whether unredacted  
17 copies of the transcripts had been sent to the OGE  
18 and you said probably; right?

19 A I think we've established that they in fact  
20 were, yes.

21 Q Was anyone at OGE a subject of the  
22 underlying investigation?

1 A They were not.

2 Q And was anyone at the OGE a subject of the  
3 criminal referrals?

4 A No, they were not.

5 Q Was anyone at the Treasury a subject of the  
6 investigation?

7 A Yes.

8 Q Was anyone at the White House?

9 A Yes.

10 (Discussion off the record.)

11 BY MR. O'CALLAGHAN:

12 Q I just finished asking you whether anyone  
13 at the White House was the subject of the underlying  
14 investigation and you said yes?

15 A Yes.

16 Q Was anyone at the White House mentioned in  
17 any of the criminal referrals information contained  
18 in the transcripts?

19 MR. PORTNOY: Mentioned in what way?

20 THE WITNESS: Can we go off the record for  
21 a second?

22 MR. O'CALLAGHAN: Sure.

1 (Discussion off the record.)

2 MR. GIBSON: Let the record reflect that  
3 we're going to withdraw that last question.

4 MR. O'CALLAGHAN: Withdraw that last  
5 question.

6 BY MR. O'CALLAGHAN:

7 Q When you received the letter on July 6th  
8 from the White House with regard to providing  
9 documents by the White House, were you surprised that  
10 there wasn't a mention made about providing  
11 transcripts to the White House or a reference to  
12 allowing them to sit in on interviews?

13 A No, I was not because my understanding of  
14 the July 6th letter was that it was in response to  
15 our July 1st letter asking for documents. So I guess  
16 I didn't expect to see anything in there about  
17 anything other than that.

18 Q You never heard -- did you ever hear from  
19 the White House again about a request for transcripts  
20 or sitting in on interviews?

21 A No, I did not.

22 Q Had you expected to?

1 A I would have expected to if the issue  
2 hadn't been resolved, and when I didn't, I thought it  
3 was resolved. Particularly when no one from the  
4 White House sat in on the interviews, it was obvious  
5 that that was resolved. And my assumption was that  
6 the request for transcripts was also resolved as my  
7 counsel had indicated to the White House it had been  
8 resolved in the meeting of the 5th.

9 Q Did counsel ever tell you that the White  
10 House had said in the meeting of the 5th that, okay,  
11 we don't need transcripts or, okay, we don't want to  
12 sit in on the interviews?

13 A No. I believe what she said was that she  
14 had made our position very clear to the White House,  
15 and they had indicated that I might be receiving a  
16 phone call from the White House, which we both  
17 interpreted as if they have a problem with the  
18 position as we've laid it out, they're going to call  
19 me and tell me that. Otherwise, if we don't hear  
20 anything, then it would appear they've accepted our  
21 position on this matter. That was our  
22 interpretation.

1 Q Were you ever informed that Ms. Sherburne  
2 had made requests to the Treasury IG office for  
3 copies of the transcripts in mid-July?

4 A No.

5 Q So you never were informed of that?

6 A No.

7 Q Did the White House interview any RTC  
8 witnesses in that investigation?

9 A Not to my knowledge.

10 Q Had you ever been contacted about them  
11 getting access to interview RTC witnesses?

12 A Had I been contacted about the White House  
13 getting access to interview RTC witnesses?

14 Q Correct.

15 A No.

16 Q Do you know if anyone at the RTC was  
17 contacted by the White House about interviewing  
18 people?

19 A I do not know.

20 Q Okay. Mr. Portnoy asked you if you thought  
21 the memorandum by Mr. Cesca to Ms. Hanson regarding  
22 Francine Kerner's role during the time of the

1 investigation -- I think we've referred to it as the  
2 Chinese wall memo, I guess, keeping her separate from  
3 reporting facts of the investigation to the general  
4 counsel's office. Do you know that memo had been  
5 drafted by Francine Kerner?

6 A No.

7 Q And Mr. Portnoy asked you earlier whether  
8 you would be reluctant to release Pat Black as  
9 counsel during the investigation?

10 A Yes.

11 Q Would you have a problem with releasing  
12 Ms. Black's services during the investigation if she  
13 had a conflict of interest that was similar to  
14 Ms. Kerner's?

15 MR. PORTNOY: Objection. It's by no means  
16 clear that Ms. Kerner had a conflict of interest.  
17 That's your characterization.

18 MR. O'CALLAGHAN: I'll rephrase that. I  
19 didn't mean to make a characterization. Excuse me.

20 BY MR. O'CALLAGHAN:

21 Q The problems that you had with Ms. Kerner's  
22 involvement with the investigation, if you had had

1 similar problems with Ms. Black's involvement in the  
2 investigation, would you have had an objection to  
3 removing her from being involved?

4 A Well, if Ms. Black were an employee of the  
5 general counsel's office at RTC and I was doing an  
6 investigation of the general counsel -- which we have  
7 had to do, by the way -- I would not want her to be  
8 involved in the investigation just simply from an  
9 appearance standpoint. I wouldn't want people  
10 questioning why she was involved, so I would have had  
11 a problem with keeping her on in an investigation  
12 involving the general counsel if she worked for the  
13 general counsel's office.

14 Q And as far as this investigation was  
15 concerned, you had no problem with -- Ms. Black had  
16 no problems similar to Ms. Kerner's, did she?

17 A No, she did not. Because she works for me.

18 Q Even though you said that you believe the  
19 RTC IG's office was assisting the Treasury IG's  
20 office in the investigation, was it your belief that  
21 transcripts and the information contained within it  
22 were the property of both Treasury IG and RTC IG's?

1 A I would say yes.

2 MR. PORTNOY: Could you clarify whether  
3 that was contemporaneous view or one that you're  
4 coming to now in response to Mr. O'Callaghan's  
5 question.

6 THE WITNESS: I think that even though we  
7 had been asked to assist the Treasury IG, we viewed  
8 this as a joint investigation where we were providing  
9 an equal number of investigators to what Treasury IG  
10 was providing, where I was going to be signing the  
11 report along with Mr. Cesca and so had pretty much  
12 equal responsibility. If anything went wrong, I  
13 would certainly get blamed as much as Mr. Cesca. And  
14 in that sense, I felt that we would probably be  
15 jointly in custody of the transcripts as well.

16 BY MR. O'CALLAGHAN:

17 Q Plus the transcripts --

18 A Certainly the transcripts of the Resolution  
19 Trust Corporation individuals, but more so all the  
20 transcripts. Since the interviews were mostly done,  
21 as I said, with one of our investigators and one of  
22 theirs, everything was done pretty much jointly.

1 Q And some of the transcripts contained  
2 confidential information regarding ongoing criminal  
3 investigations; is that right?

4 A That's right.

5 Q Were you asked to give the results of the  
6 investigation to anyone at Treasury other than  
7 Secretary Bentsen?

8 A No, not that I recall, no.

9 Q Were you asked to give the report to anyone  
10 at the Treasury Office of General Counsel?

11 A No.

12 MR. O'CALLAGHAN: I have no further  
13 questions.

14 MR. PORTNOY: I have one short inquiry.

15 EXAMINATION

16 BY MR. PORTNOY:

17 Q You testified that you attended the meeting  
18 prior to this deposition to refresh your  
19 recollection?

20 A Yes.

21 Q Was that in order to allow you to give more  
22 complete testimony today?

1 A I think it was two things. One was, as I  
2 said, to refresh our recollection of events more than  
3 a year ago and the second was to give a little bit of  
4 an understanding of the ground rules of how this was  
5 going to occur as we understood them.

6 Q Do you believe your testimony today was  
7 more accurate as a consequence of the meeting?

8 A I think so. I think so. I don't think  
9 I -- I obviously haven't remembered everything and I  
10 needed refreshment on some of these matters, but it  
11 probably would have been less complete had I not sat  
12 down and tried to remember what occurred a year ago.

13 MR. O'CALLAGHAN: You are speculating  
14 though; right?

15 THE WITNESS: That's speculation, yes. I'm  
16 speculating that it might have been less complete had  
17 I not thought about it a little bit.

18 BY MR. PORTNOY:

19 Q But in your view, it might have been less  
20 complete if you hadn't had that meeting?

21 A Yes, it might have.

22 Q So would you say that it was appropriate to



1 prepare for your Congressional testimony by  
2 refreshing your recollection?

3 A Yes, I would.

4 Q And in your judgment would it be  
5 appropriate for other witnesses to prepare for their  
6 Congressional testimony by refreshing their  
7 recollection?

8 A Yes, I believe it would.

9 MR. PORTNOY: That's all I have. Thank  
10 you.

11 EXAMINATION

12 BY MR. O'CALLAGHAN:

13 Q I just have one more follow-up.  
14 Mr. Portnoy just asked you a pretty broad question,  
15 whether you thought it would be appropriate for other  
16 witnesses to refresh their recollection before  
17 Congressional testimony. Do you think it would be  
18 appropriate for other witnesses to refresh their  
19 recollection with -- let me withdraw that last  
20 question.

21 I want to make sure I ask this properly.

22 Do you think it would be proper for

1 witnesses to refresh their recollection before  
2 Congressional testimony using information that was  
3 gathered during the course of an investigation of  
4 which they're a subject of?

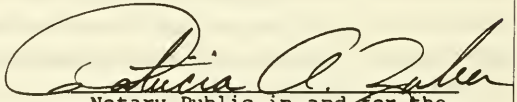
5 A That in the context of our discussion today  
6 I think maybe the difference -- in other words, we  
7 were refreshing our memories based on information  
8 within our office as opposed to perhaps others that  
9 might have information from an investigation where  
10 they shouldn't have it in their possession because  
11 the investigation is still ongoing and they are the  
12 subjects of the investigation. And that, in fact,  
13 probably would, in our view, not be appropriate.

14 MR. O'CALLAGHAN: Thank you. I have no  
15 further questions at this time.

16 (Whereupon, at 2:50 p.m., the deposition  
17 was concluded.)  
18  
19

20 -----  
21 JOHN J. ADAIR  
22

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action..

  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000

DEPONENT John J. Adair (October 26, 1995)

Page 1 of 1

## ERRATA

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**DEPOSITION OF WAYNE FOREN  
IN RE: S. RES. 120**

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**THURSDAY, OCTOBER 26, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of WAYNE FOREN, called for examination pursuant to notice of deposition, at 11:22 a.m. in Room 138 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.  
Majority Deputy Special Counsel  
VIET D. DINH, Esq.  
Majority Associate Special Counsel  
MARK J. BRENNER, Esq.  
Majority Assistant Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

ALSO PRESENT: ANDREW SCHAUER



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## EXHIBITS

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| Wayne Foren<br>DEPOSITION NUMBER | IDENTIFIED |
|----------------------------------|------------|
| Foren Exhibit 1 .....            | 3, 4630    |

## P R O C E E D I N G S

Whereupon,

WAYNE FOREN

was called as a witness and, having first been duly sworn, was examined and testified as follows:

(Exhibit Foren 1 identified.)

## EXAMINATION

BY MR. GICALE:

Q State your name for the record, please.

A Wayne Foren, F-o-r-e-n.

Q Your present business address?

A It would be my residence, since I am a retired federal employee.

Q Now, you have indicated, Mr. Foren, that you are retired. When did you enter retirement?

4

A I retired on February the 17th, 1995.

Q From?

A Small Business Administration, federal service.

Q And what was your last position at the Small Business Administration?

A Special assistant to the deputy administrator.

Q How long were you in that position?

A Well, I was on paper in that position from about -- well, from October the 22nd, 1993 to February 17th.

Q Before we go back further in terms of your employment history, I would like to go over a number of things. First of all, this deposition is being conducted pursuant to Senate Resolution 120. The resolution establishes a special committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan Association, Capital Management Services, Incorporated, the Arkansas Development Finance

1 Authority, and other related matters.

2 Section 1(b)2(c) of Senate Resolution 120  
3 authorizes the investigation and public hearings into  
4 whether the Department of Justice has improperly  
5 handled RTC criminal referrals related to Madison  
6 Guaranty Savings & Loan Association or Whitewater  
7 Development Corporation.

8 MR. GICALE: Off the record for a second.  
9 (Discussion off the record.)

10 MR. GICALE: Back on the record.

11 Mr. Foren, section 1(b)2 -- I'm sorry,  
12 1(b)3(e) deals with the sources of funding and the  
13 lending practices of Capital Management Services,  
14 Incorporated and its supervision and regulation by  
15 the Small Business Administration, including any  
16 alleged diversion of funds to Whitewater Development  
17 Corporation.

18 And in addition to that, section (b)2(b) of  
19 that resolution directs the committee to conduct an  
20 investigation and public hearings into and study  
21 whether the White House has engaged in improper  
22 contacts with any other agency or department of the

1 government with regard to confidential RTC  
2 information related to Madison Guaranty Savings &  
3 Loan Association and Whitewater Development  
4 Corporation.

5 Now, you have been requested to testify  
6 before this committee. Your deposition is being  
7 taken in advance of a public hearing which may occur  
8 in November of 1995. It is possible that you may be  
9 requested to testify.

10 We will be asking you a series of  
11 questions. You are being requested to testify under  
12 oath. If you do not understand a question, please  
13 let us know and we will rephrase the question.

14 The stenographer will prepare a record of  
15 questions and answers. The deposition will be  
16 treated as committee confidential until the  
17 commencement of the hearings. Prior to the hearings  
18 you will receive a letter from the committee telling  
19 you that you may come to the Senate to review the  
20 transcripts of your deposition, and make note of any  
21 corrections of transcription on an errata sheet.

22 If you are called to testify at the public

1 hearings, you will be permitted to have a copy of  
2 your deposition transcript four days in advance of  
3 your testimony.

4 You may be represented by counsel. I see  
5 you are here alone today and not with counsel; is  
6 that correct?

7 A Yes.

8 Q Objections can be made to the form of  
9 questions and they will be noted for the record.  
10 Counsel present may object on grounds of privilege or  
11 relevance. The committee chairman may rule on  
12 objections where the witness refuses to answer a  
13 question.

14 Now, Mr. Foren, prior to your position as a  
15 special assistant to the deputy administrator, and  
16 who was the deputy administrator at that point?

17 A Cassandra Pulley, C-a-s-s-a-n-d-r-a,  
18 P-u-l-l-e-y.

19 Q Prior to that position, what was your  
20 position at the SBA?

21 A I was the associate administrator for  
22 investment. I was appointed to that position on July

1 28, 1991.

2 Q And what did you do prior to that?

3 A Prior to that, I was the director of the  
4 office of economic development, and I ran --  
5 developed and ran the SBA, Small Business  
6 Administration's certified development company  
7 program, also known as the final four program, and I  
8 was in that position from 1980 to 1991.

9 Q That was at the SBA as well; correct?

10 A Right.

11 Q As associate administrator for investment,  
12 starting in 1991, July of 1991, what were your  
13 responsibilities in that position?

14 A I was the program manager. I was  
15 responsible for all aspects of the program.

16 Q Can you describe the program?

17 A Yes. The SB -- it was -- the investment  
18 division is the organization that I headed. And its  
19 responsibility was to administer the small business  
20 investment company program, and -- which composes two  
21 types of SBIC, regular SBICs and specialized SBICs.

22 Q Can you explain what an SBIC is?

1 A A small business investment company which  
2 is an SBIC is a privately owned and managed  
3 investment company that is organized to make loans or  
4 investments -- and/or investments to small business  
5 concerns, pursuant to Title III of the Small Business  
6 Investment Act of 1958, as amended. A specialized  
7 SBIC is an SBIC that is organized to make loans or  
8 investments only to businesses owned by persons who  
9 are socially or economically disadvantaged.

10 Now, in that position, I was responsible  
11 for licensing SBICs, providing regulatory oversight  
12 to SBICs, providing financial assistance to SBICs and  
13 when necessary, liquidating SBICs. On October the  
14 1st, 1992, I assumed the responsibility for examining  
15 SBICs as well. That was legislatively transferred to  
16 the investment division, that function was.

17 Q Who did you report to?

18 A I reported directly to the associate deputy  
19 administrator for finance, investment and  
20 procurement. There was later a name change, but it  
21 was that position. But I worked directly with the  
22 administrator. I reported to the administrator

---

10

1 through the associate deputy for finance,  
2 investment --

3 Q In 1991 when you first started, which  
4 administrator were you reporting to?

5 A Patrick -- Patricia Saiki, S-a-i-k-i.

6 Q Did there come a time when Ms. Saiki left  
7 and then you reported to someone else?

8 A In January 19, 1993, there was a change of  
9 administration. And Pat Saiki was replaced by Dayton  
10 Watkins, W-a-t-k-i-n-s, who was the acting  
11 administrator, until May the 6th, 1993, when Erskine  
12 Bowles was appointed -- was confirmed.  
13 E-r-s-k-i-n-e, B-o-w-l-e-s.

14 Q Now, Dayton Watkins, was he a career  
15 employee?

16 A No, he was a political -- the administrator  
17 position is always occupied by a political appointee  
18 confirmed by the Senate.

19 Q Even on an acting basis?

20 A No, not on an acting basis. He was  
21 appointed by the -- by the White House as an acting  
22 administrator, but he was not confirmed. I think



1 what he was, he was in -- you are taxing my brain.  
2 He was appointed in another position but designated  
3 as the acting administrator.

4 Q Now, pursuant to your responsibilities  
5 as -- let me make sure I -- associate administrator  
6 for investment?

7 A For investment.

8 Q Did you have occasion to become involved in  
9 reviewing and regulating an SBIC by the name of  
10 Capital Management?

11 A Capital Management was licensed in 1978, on  
12 March the 14th, and as is the case with all  
13 licensees, they retain that status until that license  
14 is suspended or revoked. So, Capital Management was  
15 one of about 350 SBICs that were under my  
16 jurisdiction.

17 Q And which type of SBIC --

18 A They were a specialized SBIC. Capital  
19 Management was a specialized SBIC.

20 Q And its loans were to be --

21 A Its loans or investments were to be made  
22 only to businesses owned by persons who were socially

1 or economically disadvantaged. Disadvantaged small  
2 businesses.

3 Q Now, in 1991, when you assumed  
4 responsibility for regulating the specialized SBICs,  
5 and in particular Capital Management, who was in  
6 charge of Capital Management?

7 A David Hale.

8 Q What were your contacts with respect to  
9 Capital Management and David Hale, starting with 1991  
10 when you assumed responsibility for this program?

11 A I had very little -- I had no contact with  
12 David at that point. In the structure of the  
13 investment division, there was an office of  
14 investment which had responsibility for licensing,  
15 regulating, or oversight, and providing financial  
16 assistance to SBICs. And that office is -- in that  
17 office, we have account executives and each account  
18 executive had about 20 SBICs to have supervisory  
19 responsibility over directly for monitoring.

20 As an associate administrator, I didn't get  
21 involved in specific cases; that was, however, under  
22 my jurisdiction. In 1992 I became directly involved

1 with Capital Management, when in September, David  
2 Hale represented to SBA that he had a capital  
3 increase of 13.8 million.

4 Q That would have been September of 1992?

5 A September 1992 is when Capital  
6 Management -- when I started having discussions with  
7 David Hale and the company management. And it had to  
8 do with the capital increase of donated assets, that  
9 were non-cash, and his desire to get SBA's financial  
10 assistance, which we call leverage, based on those  
11 assets.

12 Q Now, in general, how would the Small  
13 Business Administration finance these types of  
14 businesses?

15 A Okay. An SBIC manager makes the -- decides  
16 what to invest in, what type of financing to provide,  
17 how long to hold and when to dispose of, whether --  
18 if it is a loan, it is disposed of based on monthly  
19 payments or whatever, if it is an equity investment,  
20 when to sell. SBA does not get involved in the  
21 day-to-day management of an SBIC.

22 Q How is the SBIC funded?

---

1 A It is funded by its own private capital to  
2 start with, and SBA expands that capital by  
3 guaranteeing SBIC securities, which are pooled, and  
4 pass-through certificates are sold in the public  
5 markets and then the proceeds remitted, net of fees  
6 and charges to the SBIC. Now, that's generally --  
7 that's how the debentures are funded and the  
8 participating securities for regular SBICs.

9 Specialized SBIC agencies also have the  
10 ability to sell preferred stock to SBA which SBA buys  
11 directly and holds. David Hale and Capital  
12 Management obtained funds from SBA in the form of  
13 debt instruments by selling securities that are  
14 guaranteed by SBA, that were pooled. And then they  
15 also sold preferred stock to SBA.

16 And to give you some specific information  
17 on that, SBA guaranteed \$2 million worth of  
18 debentures, in debentures for Capital Management,  
19 which were funded in the public markets. And SBA  
20 then also purchased preferred stock in the aggregate  
21 of 1.4 million.

22 And these --

1 Q Now, as of when did this --

2 A It happened at -- at various times.

3 Q But this would be the total?

4 A This is the total. In specific in 1980,

5 SBA purchased 500,000 in preferred stock. On

6 December the 9th, 1993, SBA guaranteed a debenture of

7 500,000 that was sold at that time to the federal

8 financing bank.

9 In 1986, on September the 10th --

10 Q Can we go back again, you said '93 was it?

11 A '83. It was '83.

12 Q That there was a 500,000 --

13 A 500,000.

14 Q -- guaranteed debenture?

15 A Guaranteed debenture.

16 Q Okay.

17 A September the 10th, 1986, SBA guaranteed a

18 million dollar debenture and SBA purchased preferred

19 stock of 500,000, so a total of \$1,500,000. And then

20 on March the 30th, 1989, SBA guaranteed a debenture

21 of 500,000 and purchased preferred stock of 400,000

22 for a total of 900,000. And in 1992, on September

1 the 30th, or a few days later, Capital Management

2 submitted an application for preferred stock of 1.4

3 million, and then a separate application for 6

4 million.

5 Q 6 million in preferred stock?

6 A In preferred stock. For a total of 7.4

7 million. Those funds were never -- those

8 applications were never funded. So the amount of

9 leverage obtained from SBA was 3.4 million.

10 Q Now, was there some type of ratio the SBA

11 used in terms of funding the SBIC?

12 A Yes, yes. Leverage -- financial assistance

13 is based on private capital, and it is provided in

14 multiples of private capital.

15 Q What were the multiples --

16 A A specialized SBIC at that time was

17 eligible for up to two times the private capital in

18 the form of debentures, and up to two times the

19 private capital in the form of preferred stock. So

20 his private capital of 1.4 million would have caused

21 him to be eligible for what, about 6 million. Just

22 shy of 6 million.

1 Q Now, directing your attention to the  
2 application, did there come a time in 1992 when you  
3 began to question the business practices of Capital  
4 Management?

5 A Well, when they submitted an application --  
6 when Capital Management in October -- in September  
7 claimed that they had a capital increase of 13.8  
8 million of non-cash assets that were donated to them,  
9 and they wanted us to provide them leverage based on  
10 those illiquid donated assets.

11 Q How much did they want to you provide?

12 A They wanted, like I said, they wanted 7.4  
13 million. They had put in two separate applications,  
14 but against the non-cash assets, it was specifically  
15 an application for 6 million against the non-cash  
16 assets.

17 That causes one to wonder. The agency's  
18 policy was to only leverage capital increases  
19 resulting from cash. And funds had to be confirmed  
20 to the agency that they were on deposit, unrestricted  
21 in any manner, before we would provide leverage.  
22 That's our -- that was the agency's policy.

---

1 Q Now, by the way, Capital Management was  
2 located in Little Rock; right?

3 A In Little Rock.

4 Q How did you become aware that they had made  
5 this application, and that this application was being  
6 questioned by your program?

7 A Well, the application was submitted by --  
8 submitted to the office of investment, and it would  
9 have gone to the account executive.

10 Q Who was that, if you recall?

11 A I don't recall at the time who the account  
12 executive was, but Walter Peterson is the account  
13 executive who either was or became soon responsible  
14 for the account. And he handled it during the latter  
15 part of '92 and into '93.

16 Q And who was it that brought that to your  
17 attention?

18 A It would have been my office director,  
19 Joseph Newell, N-e-w-e-l-l, who was the director of  
20 the office of investment.

21 Q And could you tell us how he brought this  
22 to your attention?

1 A He would have brought to it my attention as  
2 a matter of concern, since it didn't fit the policies  
3 that we had been operating by.

4 Q And as a result of him notifying you of  
5 this, what decision was made with respect to what  
6 would happen with respect to this application?

7 A Well, the application for funds was  
8 returned; I think that's appendix B, appendix A.

9 Q All right. And again you are referring to  
10 an appendix. You have a document you submitted to  
11 the committee that we have marked for identification  
12 as Exhibit Foren 1.

13 A Yes.

14 Q Okay. And you just referred to which  
15 exhibit; I'm sorry?

16 A It would be appendix A or exhibit A. This  
17 is a letter to David Hale from the area chief, who  
18 was the subordinate supervisors of Joe Newell and the  
19 supervisor of the account executive.

20 Q This is a letter to David Hale dated  
21 October 28, 1992 from Phyllis Dawson; is that  
22 correct?

1 A That's correct.

2 Q And this is rejecting his application?

3 A Right. This questions non-cash assets and  
4 rejects -- and returns -- I think it returns the  
5 application -- and she is raising the question -- she  
6 is questioning the donated assets.

7 Q Did she request further information with  
8 regard to the donated assets?

9 A She requested information, yes.

10 Q Now, was there a description of the donated  
11 assets --

12 A Yes.

13 Q -- in the application?

14 What were they?

15 A The donated assets were composed of two,  
16 one was a pool certificate backed by medical  
17 receivables.

18 Q What was the total value of that pool --

19 A 11.5 million was the value -- stated value  
20 of the pool certificate, and stock -- capital stock  
21 of a company called National Building Supply, which  
22 was supposed to be a public company and the stock was



1 supposed to be tradable.

2 Q And what was the value attached to that?

3 A 2.5 million -- no, wait a second. No, it  
4 is 1 -- one is 11 point -- it was 11.5 was the value  
5 of the pool certificate and 2.3 mill was the value of  
6 the capital stock.

7 Q Now, after Ms. Dawson requested that  
8 information, when is the next time you recall  
9 something happening with respect to her request, or  
10 your agency taking any action with respect to this  
11 request?

12 A On October the 28th, 1992.

13 Q That's when she sent the letter?

14 A That's when she sent the letter.

15 And then on December the 8th, 1992, we gave  
16 a conditional approval to the capital increase,  
17 subject to our understanding that the licensee issued  
18 no new securities and there was no transfer of  
19 control. We said that they would not be considered  
20 available for regulatory capital until converted to  
21 cash.

22 Q What does that mean, you gave conditional

---

1 approval of the \$13.8 million capital increase?

2 A We allowed the SBIC -- we allowed the  
3 specialized SBIC to take the assets on to their  
4 books, but those assets could not be used for any  
5 regulatory purposes.

6 Q And when you say "regulatory purposes,"  
7 used to obtain leveraged funds?

8 A To leverage or there are certain ratios  
9 which an SBIC must maintain. For example, not more  
10 than 20 percent of their capital can go into any one  
11 small business concern -- well, that's regulatory  
12 capital, and there are other ratios which must be  
13 maintained. So for leverage and regulatory purposes,  
14 there was no consideration given to those assets.

15 And my objective was to validate the assets  
16 and establish their source, establish their worth,  
17 and my preference was that David Hale convert them to  
18 cash. We would not give -- we would not give  
19 consideration for regulatory purposes to those assets  
20 until converted to cash. So if he wanted to get  
21 leverage based on them, he had to convert them to  
22 cash and then we would leverage them, which he never

1 did.

2 Q As a result of that requirement that these  
3 assets be reduced to cash, what is the next thing  
4 that happened?

5 A Well, he said that he would but he never  
6 did.

7 Q He, Mr. Hale?

8 A Yes. The application for leverage was  
9 returned and we never gave final approval to the  
10 capital increase.

11 Q Did there come a point in time when you met  
12 with Mr. Hale to discuss this?

13 A Yes, but that was later. In the  
14 intervening, in the -- in an intervening point in  
15 time I asked for a regulatory compliance examination,  
16 which was conducted in December. The report was  
17 issued in March.

18 Q What was the purpose of that regulatory  
19 compliance examination?

20 A We had a policy in the division that no  
21 leverage would be provided to any company unless  
22 there was a compliance examination done within two

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1 years of the date of the financing or date of the  
2 leverage. The two-year period expired in November of  
3 1992 on his company. And he wanted me to go ahead  
4 and give the leverage because, you know, the two  
5 years hadn't expired. And I said no David, that exam  
6 is too stale. I want a current examination,  
7 especially in view of the donated assets.

8 Q Now, just to be clear here, so that there  
9 were two requirements, at least two requirements,  
10 one, that he convert these assets to cash; and two,  
11 that he subject himself to this regulatory compliance  
12 examination?

13 A Regulatory compliance examination. I  
14 wanted to be satisfied there were no regulatory  
15 problems with the company, aside from the cash -- the  
16 donated assets issue.

17 Q Now, who was it that conducted this  
18 examination in the Department?

19 A I don't know the examiner's name but it was  
20 an examiner from California who -- we brought an  
21 examiner in from outside the area who had never  
22 reviewed the company before.

1 Q What were the results of that exam?

2 A The report was issued in March, which is  
3 tab, I think it is D.

4 Q And this is D, Exhibit 1?

5 A Tab D.

6 Q Okay.

7 A Tab D contains a transmittal letter to  
8 Joseph Newell who was the director of investment --  
9 here it says SBIC operations, a name change from the  
10 director of examinations, summarizing the matters  
11 relative to the exam and transmitting the exam  
12 report. And that exam report raised questions  
13 relative to the donated assets and the values,  
14 questioning the values and questioning other  
15 transactions.

16 We found out from that examination that  
17 the -- that they still wouldn't tell us where -- what  
18 the source of the donated assets were, particularly  
19 the pool certificate. And it came ostensibly and  
20 directly from a company in the Grand Cayman Islands,  
21 which, you know, causes another red flag to go up.  
22 And yet I was still not able to get an answer as to

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1 what happened.

2 But before that report was issued, David  
3 Hale came in, asked for a meeting on February the  
4 19th. And he wanted to talk about rolling back,  
5 reversing the non-cash capital increase, because  
6 he --

7 Q Back up for one second, please.

8 When you said he came in, to your offices  
9 in Little Rock or in Washington?

10 A In Washington. He asked for a meeting with  
11 me in Washington, which I granted on February the  
12 19th.

13 Now, I must add another factor here that  
14 has not been discussed. Not only did he come forward  
15 with a proposed -- with a capital increase of 13.8  
16 million, he wanted to exchange specific portfolio  
17 assets with another entity in change for more stock  
18 of the building and supply company.

19 Q And this would have been National Building  
20 Supply?

21 A National Building and Supply. He reported  
22 in June or thereabouts that he did that swap,

1 exchange of assets.

2 Q He reported in June of 1992 --

3 A '92, that he had accomplished that.

4 Q Okay. But now he wanted --

5 A But now in February, because of all the  
6 questions raised by the examination, he wanted to  
7 just reverse the stock swap and reverse the capital  
8 increase.

9 Q When you say reverse it, what do you mean  
10 by that? Sell -- these were donated assets. Give  
11 them back?

12 A Give them back. Take them off the books  
13 and put the loans, the financings back on the books  
14 that he had in effect swapped with another company.

15 Q And therefore not request any additional  
16 money based on --

17 A That's right. In other words, he wanted  
18 the problem to go away. He didn't want to answer the  
19 questions of where did the assets come from.

20 Q Okay.

21 A He didn't want to have to answer the  
22 question of what is the value of the assets. He

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1 didn't want to be forced to be put into the position  
2 of explaining why he wasn't converting the assets to  
3 cash. He said to just resolve the problems, let's  
4 put it back the way it was and that would solve the  
5 problem.

6 Q Those things he just raised, did he say to  
7 you he did not want to explain where the assets came  
8 from?

9 A No, he didn't say those things, but it was  
10 apparent to me that if you roll them back, then you  
11 don't have to answer those questions.

12 Q And you had been asking those questions up  
13 to this point in time?

14 A And not getting answers.

15 Q And then suddenly he comes in and he asks  
16 for a meeting?

17 A He asked for a meeting; he wanted to roll  
18 it back.

19 Q He wanted to adjust everything to the time  
20 period of this request for funding, leveraged  
21 funding?

22 A I said to him two things. David, I said,

1 if I were in your position I would be concerned, at  
2 that meeting, all right, you are a sitting judge in  
3 Arkansas. First of all, I said David -- the question  
4 was -- I had several people from my office in the  
5 meeting.

6 Q Who was there?

7 A My deputy, Ned Shepperson, I don't remember  
8 everybody who was there but my deputy, Ned  
9 Shepperson; Joe Newell, the director of investment  
10 would have been there; Phyllis Dawson, the area chief  
11 would have been there; and probably Peterson, Walter  
12 Peterson who is the account executive would have been  
13 there. And I don't know whether anybody was there  
14 from general counsel's office or not. May well have  
15 been.

16 Q Had you ever met David Hale prior to this  
17 meeting?

18 A No. I talked to him on the phone but I had  
19 never met him.

20 Q What prior conversations have you had?

21 A I don't recall. It was nothing -- it would  
22 have been -- it would have related to this, and it

1 may have related to -- it was either he or Tom  
2 Anderson, I forget which I had talked to relative to  
3 the possibility of setting up kind of like a one-stop  
4 shop for financial assistance, pulling together the  
5 resources of an SBIC, a certified development company  
6 and a 7(a) lender.

7 There was a model of that, or like that,  
8 established by South Shore Bank and they were  
9 interested in doing that sorts of a thing in  
10 Arkansas. And so, I had had some discussions. I  
11 don't recall whether it was with David or whether it  
12 was with Tom Anderson but it was one of the two. But  
13 I really don't have any recollection of specific  
14 conversations prior to this with David.

15 If I did, they would have related to either  
16 the application or the one-stop shop concept.

17 Q Okay, so now, when he came to your offices,  
18 you indicated to him he was a sitting judge, and I  
19 interrupted you.

20 A He was talking about the non-cash assets  
21 being donated to him and I expressed to him my  
22 concern over the value of the assets. And I said



1 David, why would somebody give you tens of millions  
2 of dollars worth of assets? Doesn't make sense.

3 Q You were concerned about the value and you  
4 were concerned about the source?

5 A Yes, yes. I said if I were you, I would be  
6 concerned one of two things: Either these assets in  
7 the eyes of a regulator -- I am concerned. Either  
8 these assets are not worth the represented value, in  
9 which case you are perpetrating a fraud on SBA, or  
10 you are being bribed.

11 Q What was Mr. Hale's response?

12 A His response was that he was close to the  
13 governor.

14 Q The governor at that time?

15 A Jim Guy Tucker. And he was close to the  
16 President.

17 Q President Clinton?

18 A President Clinton.

19 That he had access to both. And that  
20 people were giving him the money, because they wanted  
21 to do things in Arkansas, and get things done in  
22 Arkansas. And he gave an illustration of a guy who

1 wanted -- I think it was either wanted to start an  
2 insurance company or move an insurance company to  
3 Arkansas, and he said that individual was going to  
4 give him some money to put into his SBIC -- and it  
5 wasn't the money that we are talking about here, this  
6 was just another example -- and that he would be able  
7 to solve the problems for this guy, who was going to  
8 either move or start the insurance company in  
9 Arkansas.

10 Q So, again this individual, he said this  
11 individual would give --

12 A Would make donations.

13 Q To his SBIC?

14 A To his SBIC. I forget whether it was the  
15 SBIC or the entity through which this was being  
16 filtered which was Central -- CADA, something like  
17 that. Something Arkansas Development Association.  
18 It was --

19 Q Was it Central Arkansas Community  
20 Development Corporation?

21 A Yes. The idea was this money would be  
22 donated to this nonprofit organization and the money

1 could be moved around to do whatever they pleased to  
2 do.

3 Q In return for what?

4 A Getting things done in Arkansas.

5 Q Making it easier for this insurance company  
6 to do business in Arkansas?

7 A To do -- and solve problems.

8 Q And this is what David Hale --

9 A That's what he stated to me at the  
10 meeting. And I said well, David, I am concerned.  
11 And he said well, Wayne, you have to understand this  
12 is the way we do business in Arkansas. Up to that  
13 point, I was giving David Hale every consideration as  
14 the associate administrator running a program. It  
15 was my job to deal with the political side, to deal  
16 with the Hill, and to deal with these kind of issues,  
17 and I wanted to keep that stuff away from the staff.

18 Their job was to do the licensing, the  
19 regulatory, carry out the functions and not be  
20 affected by these kind of things.

21 And so I was concerned, and I said, David,  
22 I am concerned about this. I said submit your

1 proposal to do the roll-back and we will do take a  
2 look at it. And walked him to the elevator and we  
3 were done.

4 But at that time in my mind, the  
5 discussion -- my concern -- to that point I was  
6 trying to find every way I could to solve this thing  
7 and make -- in fair consideration. He increased the  
8 capital, we got an examination, we solved the  
9 problems, he converted to cash and we moved on.

10 Now, we have a larger pool of risk capital  
11 for any small business concerns in Arkansas. I was  
12 looking at it from a straight programmatic  
13 standpoint. But from that point forward, I became  
14 concerned that we were not dealing with an entity  
15 that was dealing in good faith and trust with us.

16 Q Did he say anything else to you at that  
17 meeting that you recall?

18 A Oh, I don't recall other things that were  
19 said but this sticks out in my mind because of the  
20 nature of the discussion, concern over the assets.

21 Q Did he say anything else with respect to  
22 the relationship that he had with Mr. Clinton or

1 Mr. Tucker, other than what you've stated here today?

2 A Not at that meeting.

3 Q Okay. Now, did you report the result of  
4 that meeting to your supervisor?

5 A I don't recall that I did.

6 Q What did you do as a result of that  
7 meeting?

8 A What I wanted to do was wait and get -- I  
9 may have but I don't recall reporting -- you know,  
10 you deal on a day-to-day basis with supervisors. I  
11 certainly did not report it to Dayton Watkins who was  
12 the acting administrator. If I reported it to  
13 anyone, it would have been Jan Wolfe who was the  
14 acting associate deputy administrator for finance and  
15 investment procurement.

16 Now, from that point forward, I wanted to  
17 kind of do it by the numbers. I wanted to get --  
18 before I did anything, I wanted to get the exam  
19 report in and find out what it was going to  
20 disclose. And then go from there.

21 Q This is the exam report that you eventually  
22 received on March 11, 1993; correct?

1 A Right.

2 Q Now, that exam report eventually indicated  
3 that they could not determine the source of the  
4 funding; correct?

5 A Right. Right.

6 Q Specifically the source of the pool  
7 certificate, the backing behind the pool certificate?

8 A Right. So then my next step, once we get  
9 the exam in, we issued an exam letter. The standard  
10 procedure is once you get the exam report in, staff  
11 evaluates it and then a letter goes to the company  
12 based on the results of the examination.

13 Q Now, let me again direct you to that pool  
14 certificate. One of the conclusions of the report  
15 was that that pool certificate had been delivered by  
16 Concorde International Limited, which allegedly was  
17 an offshore private investment company down in the  
18 Cayman Islands; correct?

19 A Right.

20 Q What did you do as a result of that report?

21 A As a result of that we issued, staff  
22 issued -- what we call an exam letter, raising the

1 results of the exam report, to the company  
2 officially. The report was done by the exam  
3 employees of the investment division and this is a  
4 product going in-house to the office of investment.

5 The next step is for the people that have  
6 regulatory oversight, which is the office of  
7 investment or office of operations as referred to  
8 here, they write a letter to the company addressing  
9 the issues in the report to the company, and  
10 requiring the company to either take corrective  
11 action or give information or whatever.

12 That letter was -- and I don't have a copy  
13 of it, but that letter was written on March the 26th,  
14 1993 is when it was sent to David Hale.

15 Q Is that included --

16 A No, it is not included in there.

17 Q All right. And then as --

18 A Then we still didn't get answers.

19 So, by the 5th, it became apparent to me  
20 that, by the 5th of May, we weren't going to get  
21 anything.

22 Q Can you back up for a second. On April 20,

1 1993, your chronology indicates you received a letter  
2 from David Hale regarding the examination report  
3 findings?

4 A On April 20.

5 Q Of 1992?

6 A Okay.

7 Q Is that correct?

8 A We sent the exam letter on the 26th of  
9 March. He then responded to that letter, which would  
10 have been probably your April 20 -- our April 20  
11 letter.

12 Q Again I am referring to your chronology  
13 which is part of Exhibit Number 1.

14 A Okay.

15 Q If this refreshes your recollection?

16 A Okay.

17 Q Is that correct?

18 A Yes.

19 Q So he responded?

20 A He responded.

21 Q On April 20, 1992?

22 A Right.

1 Q What was his response to the findings?

2 A Well, he tried to explained them away, and  
3 he obviously didn't agree with the conclusions  
4 reached.

5 Q At that point in time, did he explain the  
6 source of the funding?

7 A No, he never explained the source. And  
8 before he had agreed to convert the assets to cash,  
9 which he never did, he agreed to convert the  
10 exchanged assets, the Building and Supply stock that  
11 he gave us, or that he got in exchange for the  
12 portfolio companies. He said he would dispose of  
13 them convert them to cash in 120 days; 120 days was  
14 sometime in September, which he never did.

15 So, yes, the April 20 letter to Joe Newell  
16 where he addresses the exam findings, so he is  
17 responding. We gave him -- typically we give 20 or  
18 30 days to respond and he addresses the items that we  
19 raise. And the items have to do with specific -- the  
20 legitimacy of transactions, the swapping and so  
21 forth, and also whether or not these companies are  
22 disadvantaged small business concerns. And he argues

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1 that basically any business in Arkansas should be  
2 considered disadvantaged.

3 Q Why was that?

4 A Well, he just figured that Arkansas was  
5 a -- part of the lower Mississippi Delta area and any  
6 business in Arkansas should qualify.

7 Q What's the next thing that happened with  
8 respect to this request?

9 A Okay. After we got -- and he sent at that  
10 time his proposed -- his draft documents for the  
11 reversal, which had been talked about before, and the  
12 resignation of Tom Anderson as an officer and  
13 director of the company.

14 Q Was that resignation discussed in your  
15 meeting in February in Washington?

16 A No, no.

17 Q Was that related in any way to this  
18 reversal of assets?

19 A No, it had nothing to do with the  
20 transaction.

21 Now, the next thing that happened was, as a  
22 result of that, we sat back and we said, I said, the



1 only way I am going to be able to find out what  
2 really happened, because at this point reversing the  
3 transaction is not going to resolve it, at this  
4 point, in my view, he was perpetrating a fraud on the  
5 SBA and I wanted to know where those assets came from  
6 and get some idea of value. By this time we had  
7 gotten the 10-Q on the building and supply company.

8 Q What is the 10-Q?

9 A It is a report issued to the Securities and  
10 Exchange Commission, quarterly report, and it showed  
11 that the company was bankrupt.

12 Q When you say "the company," you are  
13 talking --

14 A National Building Supply company which was  
15 the stock that Capital Management received in  
16 exchange for the assets transferred, and it was one  
17 of the two non-cash assets that was proffered to the  
18 company and demonstrated as part of capital increase.

19 Q Now, he used this stock twice to  
20 demonstrate --

21 A The same stock but two different amounts.  
22 You see, he had -- about \$2 million of stock was

1 given for exchange of assets, and another 2 million  
2 of the same stock was given -- 2.3 million was given  
3 as a capital increase so you had about \$4.4 million  
4 worth of National Building Supply stock.

5 Q Which was -- which turned out to be  
6 worthless?

7 A Worthless. It was lettered stock. Turns  
8 out -- the stock was issued but it was lettered stock  
9 of a public company and the company, based on their  
10 10-Q, they were bankrupt. And so, knowing that and  
11 obviously knowing that the pool certificate came  
12 through the Grand Cayman Islands and he wouldn't tell  
13 us where it came from, I decided to make a referral  
14 to the Inspector General's Office, hoping that they  
15 would do an investigation pursuant to subpoena power,  
16 which they had.

17 Q When did you refer this to the Inspector  
18 General?

19 A I referred it to the Inspector General on  
20 May the 5th, 1993.

21 Q Prior to referring it to the Inspector  
22 General's Office, did you notify anybody else in your

1 department you intended to do this and the reasons  
2 why?

3 A I would have discussed it with my  
4 supervisor who would have been Jan Wolfe, W-o-l-f-e.

5 Q And did you likewise tell her about your  
6 conversations with Mr. Hale in February?

7 A I may have but I do not recall.

8 Q But in any event you indicated -- do you  
9 believe you gave her a history of what had occurred  
10 with respect to Mr. Hale and his request for this  
11 financing?

12 A I don't have a record of it, and I don't  
13 recall. You know, it is kind of a thing where you  
14 sit down and talk to your immediate supervisor every  
15 day on a variety of things and it would have been  
16 something -- by the way, Jan, here is what's going on  
17 with Capital Management.

18 Q Which she reviewed the documents, do you  
19 recall?

20 A Yes.

21 Q Would she have reviewed the documents?

22 A No, she would not have reviewed the

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1 documents, or again, it is possible that I didn't.  
2 Because at this point, I was trying to bring it  
3 together.

4 Q Okay.

5 A And I didn't want to -- yes.

6 Q When you say it is possible you didn't --

7 A Definitely possible I didn't discuss it  
8 with her.

9 Q Okay. But you had access to the Inspector  
10 General's Office on your own?

11 A Oh, sure.

12 Q All right.

13 A Sure.

14 Q And so who did you call at the Inspector  
15 General's Office?

16 A We -- I would have sent in -- I don't have  
17 a copy of this, it would be in the agency files --  
18 but I would have sent a memo to the Inspector  
19 General. Jim Houbler is the Inspector General.

20 Q How do you spell that?

21 A H-o-u-b-l-e-r, I think.

22 Steven Marica is the assistant Inspector

1 General for investigations. I would have either sent  
2 the memo to Jim or Steve, one of the two.

3 Q And that would have been May 5th?

4 A That would have been May 5th and May 5th is  
5 an important date in this whole scheme of things.

6 Q Now, you sent -- when you sent the memo,  
7 what did you --

8 A I called Erskine Bowles before I sent the  
9 memo and I briefed him.

10 Q Now, at this point in time --

11 A He was not the administrator, he was the  
12 designated -- he was administrator designate.

13 Q Was he working at the SBA in some kind of  
14 capacity?

15 A Well, he was at the -- he was resident in  
16 the agency.

17 Q As a consultant?

18 A As a consultant. Until he was nominated,  
19 he didn't come to the agency; once he was nominated,  
20 then he worked at the agency.

21 Q Do you know when he came, started working  
22 at the agency?

1 A I don't remember. I briefed him around --  
2 I briefed him the latter part of March, like March  
3 26, early April, I know, at the White House. At the  
4 Old Executive Office Building.

5 Q Briefed him on what?

6 A On the SBIC program overall.

7 Q Okay. Did you brief him at that point in  
8 time on these Hale transactions?

9 A No, no. At that point, I focused on what  
10 was going on from a policy standpoint, what the  
11 program was and the issue we were dealing with and  
12 not case matters. I did not brief him on case  
13 matters at that time.

14 Q Were you requested to brief him on case  
15 matters?

16 A No.

17 Q All right. And was it at that point in  
18 time that he came on the SBA as a consultant?

19 A He was confirmed on the 6th of May, which  
20 was the next day.

21 Q But between March 26 --

22 A Whatever. He was like a consultant. But

1 his role was to become knowledgeable of what was  
2 going on in the agency. He didn't do anything other  
3 than, you know, prepare himself for the hearings and  
4 to take control of the agency.

5 Q Did you brief him between the time you met  
6 with him and March of 1993, and then prior to the  
7 time he was confirmed, May 5th, prior to May 5th,  
8 1993?

9 A I probably did. Obviously I did here, on  
10 May 5th. I don't recall other discussions I had. I  
11 know I prepared my materials for him, questions and  
12 answers and that sort of thing, in preparation for  
13 his confirmation hearings.

14 Q And his confirmation hearing was to occur  
15 on May 6, 1993?

16 A Yes.

17 Q Prior to sending this memo to the Inspector  
18 General, Mr. Houbler or Mr. Marica, you called --

19 A I called Erskine.

20 Q Did you know him prior to meeting him in  
21 March of 1993?

22 A No, no, didn't know him. He had an SBIC,

1 turns out, he had an SBIC called Kitty Hawk Capital.  
2 He had controlling interest. Somebody else was  
3 managing it.

4 Q Where was that located?

5 A In North Carolina.

6 Q Did you know him from that --

7 A No, I did not know him from that.

8 Q You learned that subsequently?

9 A I learned that subsequently, sure.

10 Q The stenographer had a question with  
11 respect to your testimony. All these references with  
12 respect to the meetings would be -- starting from  
13 January on were in 1993; is that correct?

14 A Yes.

15 Q So the meeting in February was 1993?

16 A Yes.

17 Q The meeting in March with Mr. Bowles was  
18 1993; correct?

19 A Yes.

20 Q And when you -- these letters that went out  
21 in March to Mr. Hale, and his letter back to you was  
22 in April, was in 1993; correct?

1 A That's correct.

2 Q And then, when you decided to send a memo  
3 to the Inspector General, that was May of 1993; is  
4 that correct?

5 A That is correct.

6 Q Now, prior to sending the memo to the  
7 Inspector General, you called Erskine Bowles?

8 A Yes.

9 Q What did you say to him?

10 A I said Erskine, I got a problem, we got a  
11 problem, and I outlined the problem to him, and I  
12 asked the question. I said do you want me to  
13 refer -- I made a decision. As program head, I am  
14 going to refer it to the Inspector General and I  
15 explained why.

16 Q Did you in detail explain what the problem  
17 was?

18 A Yes.

19 Q What did you say?

20 A I sent him a memo which is an exhibit.

21 Q What did you say to him?

22 A I said we are going to make -- we have

1 decided to make a referral, do you want it done today  
2 or do you want it done tomorrow. He said do it  
3 before close of business today.

4 Q How did you describe the problem to him?

5 A I described the problems of the 1992  
6 capital increase, of non-cash assets, based on  
7 non-cash assets, the request for leverage of 6  
8 million based on that cash increase. And our efforts  
9 to try to confirm source, and valuation, and try to  
10 get valuation and to assure there was no restriction,  
11 encumbrances in any fashion. And we couldn't get  
12 those answers and that I needed to go to the  
13 Inspector General to get the answers.

14 Q Did you tell him about your meeting in  
15 February of 1993 with David Hale?

16 A I don't recall.

17 Q Did you tell him that Mr. Hale had  
18 indicated that -- did you talk to him about the  
19 statements Mr. Hale had made with respect to  
20 Mr. Clinton and Mr. Tucker?

21 A I really don't recall.

22 MR. GICALE: Now, off the record for a



1 second.

2 (Discussion off the record.)

3 MR. GICALE: Back on the record.

4 BY MR. GICALE:

5 Q I am going to show you what's marked again  
6 as Exhibit I; you have an attachment to that labeled  
7 Exhibit F. And this is the -- this memo was not  
8 dated, I don't believe.

9 A No, it is not.

10 Q It's entitled "Capital Management Services,  
11 Inc., Little Rock, Arkansas, license number  
12 0606-5207." First paragraph is entitled "summary"  
13 and starts with the words "non-cash assets";  
14 correct? Now that is the memo that you prepared for  
15 Mr. Bowles?

16 A Right.

17 Q And did you give this to him --

18 A Yes.

19 Q -- prior to sending your request to the  
20 Inspector General, or is this the same memo that you  
21 sent to the Inspector General?

22 A What I did was, as I recall, I prepared

1 this, I discussed it with him and I prepared this and  
2 I discussed it with him over the phone, and he said  
3 do it today, don't do it tomorrow. And I said fine.  
4 And I did it, and I sent him this, this summary. I  
5 believe I sent -- I don't recall whether I met with  
6 him over it or sent it to him but I believe I sent it  
7 to him.

8 Q The summary we have just described, was  
9 that also sent to the Inspector General, or something  
10 else?

11 A I do not recall. I do not recall. I would  
12 have given, as -- the standard approach would be we  
13 are giving in a different format the same kinds of  
14 information to the Inspector General, but under a  
15 memo, cover memo, not -- this is just like a briefing  
16 outline.

17 Q Now, when you notified the Inspector  
18 General, that was in writing, and did you --

19 A Yes.

20 Q -- talk to him by phone as well?

21 A I don't recall.

22 Q Is there anything else that happened of

1 significance on May 5th, 1993?

2 A Yes. The same date, well, the same date, I  
3 had Joe Newell send a memo to David Hale, which was  
4 faxed to him, addressing the issues of the findings,  
5 one, in the exam report, also discussing the matter  
6 of reversal, which is what he asked us to do, or  
7 asked our approval for in his April 20 letter. And  
8 we said basically we don't approve the reversal, and  
9 we've referred the matter to the Inspector General to  
10 try to determine the source of the assets.

11 Q Now, incidentally, on that date as well,  
12 there was a chronology of events regarding Capital  
13 Management's application for leverage and subsequent  
14 referral?

15 A Right.

16 Q That's a part of your Exhibit Number 1?

17 A Right.

18 Q And that comes after the exhibit titled F.  
19 Was that also given to Mr. Bowles?

20 A No, this is just a memo to the file, to try  
21 to -- this was given to me before -- I think it was  
22 given to me before. No, this was prepared after I

1 had briefed Erskine --

2 Q And when --

3 A -- and we sent the letter.

4 Q Just so that we can describe this, as --  
5 more accurately describe this, this is a memo to  
6 Newell from Phyllis -- through Phyllis Dawson from  
7 Walter Peterson, regarding Capital Management?

8 A Right.

9 Q Reverse chronology starting with May 5th;  
10 correct?

11 A Right. And it summarizes for the file the  
12 events absent dates. It was prepared after, because  
13 it includes the discussion relative to referring to  
14 the IG, but it was prepared before Joe Newell's  
15 letter because his letter is not part of the  
16 chronology.

17 Q All right. In your letter to Mr. Hale, you  
18 indicate to him that the matter had been referred to  
19 the Inspector General for investigation; is that  
20 correct?

21 A Right.

22 Q And as a result of you sending that letter

1 to Mr. Hale -- and I take it that letter was faxed?

2 A It was faxed.

3 Q Faxed to Mr. Hale. Did Mr. Hale send a  
4 letter back to you?

5 A Yes, he did.

6 Q And that letter is an exhibit as well?

7 A That's the following exhibit.

8 Q That's the following exhibit, after the  
9 letter to Mr. Hale?

10 A Right.

11 Q That was exhibit letter F which you have in  
12 your Exhibit 1 in that -- after the chronology, and  
13 the letter to Mr. Hale is a faxed sheet to Mr. Newell  
14 from David Hale; is that correct?

15 A Together with his letter.

16 Q Together with his letter to Mr. Newell?

17 MR. IVEY: This is Exhibit I of Exhibit 1?

18 MR. GICALE: I believe -- let me just have  
19 one moment. Yes, this would be Exhibit I.

20 MR. IVEY: Okay. There is a series from F,  
21 that's F, which was the sort of briefing memo that  
22 was given to Mr. Bowles.

1 MR. GICALE: Right. I will go through  
2 this.

3 BY MR. GICALE:

4 Q And G is the chronology; is that correct?

5 A Yes.

6 Q That you described, starting with May 5th.

7 H is the letter to Mr. Hale dated May 5th, 1993. And  
8 now we are at I, which is a -- a fax copy of a  
9 letter, a fax sheet and a letter attached. The fax  
10 sheet is to Mr. Joseph Newell from David Hale; is  
11 that correct?

12 A Yes.

13 Q Now, in the letter of May 5th to Mr. Hale,  
14 it indicates he was shocked regarding the referral to  
15 the Inspector General?

16 A Right. He thought that we had agreed in  
17 our February meeting to accept the reversal, and then  
18 the problem would go away, the problem of where the  
19 assets came from, the problems surrounding the swap  
20 of assets and the donated assets. He just figured  
21 those problems would go away and he was shocked that  
22 we would make a referral to the IG.

1 Q Now, do you know at this point in time  
2 whether Mr. Bowles informed anybody of the  
3 information that you had conveyed to him --

4 A Yes.

5 Q -- with respect to Mr. Hale?

6 A Yes.

7 Q Who had Mr. Bowles informed?

8 A He had a dinner meeting with Mack McLarty,  
9 the chief of staff -- the White House chief of  
10 staff. And he briefed him on the David Hale case.

11 Q Now how do you know this?

12 A He told me that.

13 Q He told you that when?

14 A On the 6th.

15 Q Did he tell you exactly what he had said --

16 A No, he just said he briefed him on Capital  
17 Management. He would have had the briefing outline  
18 that I gave him by that time, and it is my belief  
19 that what he briefed him on was the subject matters  
20 in the briefing outline, which was the items of  
21 discussion that were going on relative to Capital  
22 Management.

1 Q So we are clear on this point, as of the  
2 time that he briefed Mr. McLarty, had you told him  
3 whether or not Mr. Hale had mentioned Mr. Clinton or  
4 Mr. Tucker?

5 A I don't recall. I do not remember briefing  
6 Mr. Bowles on that discussion.

7 Q With Mr. Hale in February?

8 A Right.

9 Q And that discussion is not reflected in  
10 these documents?

11 A No, that discussion is not.

12 Q Now, what is the next thing --

13 A I considered that discussion to be a bit  
14 of -- I did not doubt for a moment that he had access  
15 to either of them, because I would get calls from  
16 time to time from the Senate Small Business Committee  
17 staff, knowing that David had called up there, called  
18 for the Senator. And they would ask for information,  
19 ask questions and I would give them information that  
20 was appropriate and relevant. And the problem would,  
21 you know -- the question, the issue would be resolved  
22 or would die down. So I knew that David did have

1 access at least to the Senator, and I presumed he  
2 did.

3 Q Which Senator are you referring to?

4 A Bumpers. He was chairman of the Senate  
5 Small Business Committee at the time. And --

6 Q So you had received calls from Senator  
7 Bumpers's staff on other occasions on behalf of  
8 Mr. Hale?

9 A Right. Particularly on the matter of the  
10 leverage application, and the non-cash assets, the  
11 increase in capital resulting from non-cash assets,  
12 which is fine; these are normal constituent inquiry  
13 questions.

14 Q Do you know who from Mr. Bumpers's staff  
15 called you on behalf of Mr. Hale?

16 A Yes, Patty Forbes called me.

17 Q Do you know whether --

18 A Or John Ball, could have been Patty, could  
19 have been John, I talked with both of them on a  
20 continuing basis. John was staff director and --

21 Q What about an individual by the name of  
22 Paula Casey?

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1 A Was she on -- I don't recall.

2 Q So you believed he did have this access  
3 based on some prior experience?

4 A Oh, sure.

5 Q But you don't recall whether or not you  
6 mentioned these statements to Mr. Bowles, prior to  
7 his meeting with Mr. McLarty?

8 A No, I really don't.

9 Q What's the next thing that you recall  
10 occurring with respect to this matter?

11 A Then, well, the next thing, crisis that  
12 came up, basically was he had debenture payments due  
13 in May.

14 Q Let's back up to May 6th, that was the date  
15 of Mr. Bowles's confirmation hearing?

16 A Yes.

17 Q When did you see Mr. Bowles, and when did  
18 you have the conversation with him wherein he  
19 stated --

20 A It would have been during the day. See, I  
21 met with Erskine very frequently. He was a venture  
22 capitalist, is a venture capitalist. He fully



1 understands the SBIC program, and the changes that we  
2 made in -- we got a law -- an amendment to the law in  
3 1992 which revitalized the SBIC program. It was the  
4 most significant change to the program since the  
5 program began in 1959.

6 And it was sometime along that period of  
7 time, just to give you an example, he said, after I  
8 briefed him at the White House, he said, you know, I  
9 wish these changes had been made when I had my  
10 company because he said I wouldn't have had the  
11 problems with it I had.

12 He fully understood the program, he  
13 understood the changes we had made, and he was very  
14 much interested in the program. He considered it the  
15 centerpiece of what he wanted to do with his  
16 administration or his period of time as administrator  
17 of SBA.

18 Q So as a result of that you would have  
19 frequent conversations?

20 A I had very frequent conversations with  
21 Erskine.

22 Q Would that have been the next morning

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1 perhaps?

2 A It would have been probably in the  
3 afternoon of the 6th. I remember it was the next  
4 day. It would have been after his confirmation  
5 hearing.

6 Q That he told you he had dinner with  
7 Mr. McLarty and informed him about the problems with  
8 Mr. Hale and Capital Management?

9 A Right, right, right.

10 Q All right.

11 A And he said that -- and his response was,  
12 the conclusion of his comment was, I distinctly  
13 remember, that McLarty's attitude was handle it as  
14 you would handle any other case. I knew that this  
15 company was from Arkansas, and I knew it had to be a  
16 sensitive subject. If David Hale's claims were  
17 right, if he indeed had access to the President and  
18 to the governor, I felt it was my job to brief my  
19 supervisor, or soon-to-be supervisor, of an issue  
20 that may well be of concern to his supervisor.

21 Q Okay. Now, what is the next event that  
22 occurred after that conversation with Mr. Bowles,

1 subsequent to his confirmation?

2 A There was a problem -- David Hale didn't  
3 make his May debenture payments that were due.  
4 Debenture payments, interest is due every six  
5 months. Principal is due at the end of term.  
6 Apparently David had some debenture payments that  
7 were due in May and he didn't make them.

8 So what we did was we proceeded to throw  
9 him into liquidation which would mean accelerate the  
10 debt for nonpayment and proceed to throw the company  
11 into liquidation.

12 I at that time gave Erskine another  
13 briefing memo.

14 Q Now, prior to giving him this briefing memo  
15 on May 13, 1993 --

16 A Not May 13, May 19. May 19.

17 Q That's when you gave him the briefing  
18 memo. But on May 13, 1993, did Claude Cooper give  
19 you a memo --

20 A Yes.

21 Q -- regarding a phone call from David Hale  
22 on May 13?

1 A Yes, he did.

2 Q What was that with respect to?

3 A As I earlier indicated, there had been some  
4 discussions about the possibility of trying to  
5 develop a one-stop capital shop where a small  
6 business concern would come to one place and get  
7 access to either secured lending, as is the case with  
8 the 7(a) program, real estate financing as is  
9 available under the 504 program from a certified  
10 development company, or risk capital from an SBIC.

11 And so what David apparently was trying to  
12 do was trying to keep a discussion going after the  
13 referral to the IG, and he wanted me to come down and  
14 meet with the people at the Arkansas Development  
15 Finance Corporation, I think it was, and talk about  
16 the one-stop shop concept.

17 Q Did that also include a meeting with  
18 Governor Tucker?

19 A It was supposed to have included a meeting  
20 with Governor Tucker.

21 Q And what was your response to that?

22 A My response was it is not appropriate, and

1 now is not the time. You know, we have made a  
2 referral of your company to the IG to do an  
3 investigation of your company, and you know, we are  
4 not going to have a meeting like that now.

5 Q Okay. Now, there came a point in time --  
6 incidentally, the memo with respect to that  
7 conversation with David Hale is identified as J, part  
8 of Exhibit 1; correct?

9 A Yes.

10 Q Now, there came a point in time, when you  
11 briefed Mr. Bowles again on May 19, 1993; is that  
12 correct?

13 A That's correct.

14 Q And you have a summary of that briefing  
15 which is marked as attachment K as a part of Exhibit  
16 1; is that correct?

17 A Yes.

18 Q And this is -- and what did you tell  
19 Mr. Bowles about the status of Capital Management at  
20 that point?

21 A I made reference to the previous briefing  
22 memo by including some of the previous information,

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1 and then I included the information about the  
2 defaulted payments on debentures and our plan to make  
3 a -- have a preliquidation meeting and to transfer  
4 the company to liquidation for nonpayment of  
5 debentures.

6 Q And what was his response to that?

7 A His response was fine.

8 Q Did you say anything else to him? By the  
9 way, this was a memo to him. Did you also have a  
10 conversation with him?

11 A This was a briefing outline.

12 Q Okay. So it's an outline and you actually  
13 talked to him about this?

14 A I don't recall whether I sat down -- I may  
15 well have sat down and discussed it with him, or I  
16 may have just -- I may have just picked up the phone  
17 and said Erskine, I want to give you an update on  
18 Capital Management and dropped it off with his  
19 secretary, Pam. I just don't recall.

20 Q But in any event, as a result of either the  
21 conversation or this memo, he indicated he had no  
22 problem with proceeding in this fashion; is that

1 correct?

2 A That's correct; that's correct.

3 MR. IVEY: Which memo are we on?

4 MR. GICALE: This is K.

5 BY MR. GICALE:

6 Q And again, this is a summary briefing memo  
7 for Mr. Bowles, dated May 19, 1993; is that correct?

8 A That's correct.

9 Q Now, on June 14, 1993, did your office  
10 receive a call from the Federal Bureau of  
11 Investigation with respect to some information that  
12 they, or assistance they wanted with respect to  
13 Capital Management?

14 A Yes, they did.

15 Q What was the nature of that call?

16 A There was an FBI agent who had been  
17 assigned to the case.

18 Q That was David Reign?

19 A Yes. And he wanted information regarding  
20 Capital Management, which we provided.

21 MR. IVEY: Off the record for a moment.

22 (Discussion off the record.)

1 BY MR. GICALE:

2 Q Do you recall what information he  
3 requested?

4 A He wanted documents that related to the  
5 case, including the recent examination report,  
6 financial reports, and information on specific  
7 portfolio items.

8 Q Now, is his contact with your office  
9 reflected in Exhibit L which is attached to -- which  
10 is a part of Exhibit 1?

11 A Yes, it is. And at that time, he told my  
12 staff that Capital Management was providing some, he  
13 called it missing pieces to the puzzle of the Madison  
14 Guaranty case that they were working on.

15 There is something that hasn't been  
16 discussed here, which should be made as a comment to  
17 kind of bridge it over. I made a referral to the  
18 Inspector General. The Inspector General concluded  
19 that they didn't have staff to work the case, so they  
20 made a referral to the Justice Department. That's  
21 how it got over to the Justice Department rather than  
22 our people -- my intent was to do -- have our IG

1 people go to David, and -- with subpoena power, and  
2 get some answers.

3 Q Go to David Hale?

4 A Yes. But instead of doing that they made a  
5 referral to the Justice Department. And apparently  
6 the people at Justice that got the case had already  
7 been doing some work on the Madison Guaranty thing,  
8 and when they saw the financial transactions of  
9 Capital Management, they became interested because  
10 the guy who was -- who contacted my staff person said  
11 that Capital Management provided answers to them on  
12 Madison Guaranty and supplied some missing pieces of  
13 the puzzle.

14 Q Do you know when the Inspector General  
15 referred it to the FBI?

16 A It would have been in May.

17 Q Of 1993; correct?

18 A Yes.

19 Q Now, do you recall anything else, any other  
20 discussions with the FBI that the point?

21 A No. The FBI staff person -- the FBI worked  
22 with my staff person, and that was just providing

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1 information.

2 Q Now, from that point on, did you continue  
3 to receive briefings with respect to the  
4 investigation being conducted by the FBI?

5 A I don't know as I received briefings. They  
6 would ask for information, we would supply it. They  
7 really didn't brief us as such, the FBI doesn't brief  
8 you. They basically ask for information, and from  
9 time to time, maybe tell you what's going on, but  
10 usually it is just asking for information.

11 Q Okay. Were you keeping Mr. Bowles current  
12 with respect to these requests from the FBI?

13 A I considered that just a staff -- just  
14 ordinary operation and I do not believe that I  
15 briefed him on that, although I may have. I don't  
16 recall.

17 Q What is the next significant event you  
18 recall with respect to this matter?

19 A Well, to me the next significant event,  
20 which I don't have any documentation on, is that  
21 David Hale's records were -- the FBI got an order,  
22 court order to be able to seize Capital Management's



1 records on July 20th.

2 Q How did you know that?

3 A We were told that later. We didn't know it  
4 in advance. We were told later.

5 Q Now, this was also, according to your  
6 chronology, the date Mr. Foster was found dead?

7 A Yes, that was the day -- it is interesting,  
8 although I have no reason to believe there is a  
9 connection, but it is interesting that's the same  
10 date.

11 MR. IVEY: I guess for the record, I would  
12 mention at this point, that's not in the scope of the  
13 investigation we are doing now. We took a look at  
14 Mr. Foster's death in the summer of 1994, and I  
15 assume the majority is not going into that at this  
16 point.

17 MR. GICALE: I am not going into that. It  
18 is just referenced in his chronology. That's all.

19 THE WITNESS: The next significant event is  
20 August the 4.

21 BY MR. GICALE:

22 Q What happened August the 4th?

1 A My deputy sent a memo to Jan.

2 Q Before we get to August 4 --

3 A Yes.

4 Q -- did your office receive a letter from  
5 the U.S. Attorney's Office in Little Rock on July 29,  
6 1993, with respect to Capital Management?

7 A Yes.

8 Q What was the nature -- and you have  
9 attached a copy of that letter, it is the second  
10 document -- I'm sorry, there are two documents  
11 labeled as tab M, as a part of Exhibit 1, one is the  
12 memo dated August 4, 1993, to Janice Wolfe from  
13 Charles Shepardson, attaching, apparently, a letter  
14 from Fletcher Jackson of the U.S. Attorney's Office  
15 to Roger Peterson dated, July 29, 1993; is that  
16 correct?

17 A That's correct.

18 Q Regarding Capital Management; is that  
19 correct?

20 A Yes.

21 Q What was the request with respect to that  
22 letter?

1 A The July 29 letter is a summary, or is a  
2 recounting of transactions involving Capital  
3 Management which explained -- which gave some  
4 background of a couple of things, of a capital  
5 increase that occurred in Capital Management of  
6 400,000, and then payment on loans of 400,000.

7 Q Now, that transaction, that was the 1988  
8 transaction which was --

9 A That's true.

10 Q -- distinct from this 1992 request that  
11 started this?

12 A -- that's true.

13 Q -- correct?

14 A That is correct.

15 Q Could you describe and explain the 1988  
16 transaction that they were referencing?

17 A Well, in the 1988 transaction, a  
18 stockbroker in Louisiana took \$800,000 out of a  
19 client's account, and 400,000 of it was deposited in  
20 Capital Management's savings account and represented  
21 to SBA as being a capital increase.

22 And then the other \$400,000 was converted

1 to cashiers checks, two or three -- I think three --  
2 cashiers checks and submitted to Capital Management  
3 as -- and represented as, in one case, a repayment of  
4 a loan, and in the other cases, payments that would  
5 bring loans current.

6 Then the \$800,000 that was received was  
7 redistributed to three other companies, paper  
8 companies, sham companies. And then those moneys  
9 were given back to the stockbroker and money was put  
10 back in the client's account.

11 So David Hale perpetrated a fraud on SBA in  
12 1988 by representing that there was a capital  
13 increase, and that loans were repaid, and then the  
14 money was returned by way of representing that three  
15 bogus loans were made to small businesses.

16 Q Was this the first time you were made aware  
17 of that particular transaction?

18 A That is correct.

19 Q Did you have any discussions with  
20 Mr. Jackson with respect to this transaction?

21 A I did not. The staff may have. I did  
22 not.

1 Q Did you begin to make an inquiry with  
2 respect to your staff with respect to this  
3 transaction?

4 A The letter is pretty clear on its face, and  
5 it is pretty clear that a fraud was perpetrated on  
6 SBA. My deputy -- obviously I was out of the office  
7 on the 4th of August because my deputy sent a letter  
8 to my immediate supervisor, Jan Wolfe.

9 Q Now, the next event that you described  
10 occurred on August 4, 1993.

11 A That is the August 4 one.

12 Q Mr. Jackson's letter was dated July 29,  
13 1993; correct?

14 A Correct.

15 Q There is another exhibit marked N which is  
16 a part of exhibit -- it is an attachment N marked as  
17 a part of Exhibit Number 1 and that is an August --

18 A It's undated.

19 Q Undated. I'm sorry.

20 MR. IVEY: I thought the August 4 was the  
21 memo in front of the July 29 letter that you were  
22 discussing. The August 4 memo --

1 BY MR. GICALE:

2 Q I take it back. The August 4 memo was to  
3 Janice Wolfe from Shepardson attaching the letter?

4 A Transmitting this. He wanted to brief my  
5 boss as to the fraud that had been perpetrated onto  
6 the SBA, and the normal course of events is to throw  
7 the company into liquidation which is what we  
8 proceeded to do.

9 Q Now, at this point in time, did you brief  
10 Mr. Bowles with respect to this transaction --

11 A No.

12 Q -- and the fact that it was being  
13 investigated by the U.S. Attorney's Office?

14 A No, no, no. I briefed Mr. Bowles  
15 concerning this on, I believe it was August the 9th.

16 Q Now, did you prepare a briefing memo for  
17 Mr. Bowles with respect to this transaction?

18 A Yes, I did.

19 Q Can you pull that out other exhibit,  
20 because we don't have --

21 MR. IVEY: Off the record for a second.

22 (Discussion off the record.)

1 MR. GICALE: On the record again.

2 BY MR. GICALE:

3 Q On August 9, you prepared a memo to brief  
4 Mr. Bowles with respect to the status of the  
5 investigation of these transactions, and the action  
6 of the SBA; is that correct?

7 A That is correct.

8 Q And that is marked as attachment O as a  
9 part of Exhibit 1 for purposes of this deposition; is  
10 that correct?

11 A That is correct.

12 Q And the date of that memo was August 9,  
13 1993 and that is to Erskine Bowles from Wayne Foren;  
14 is that correct?

15 A That is correct. And that is also cleared  
16 off -- cleared by the acting general counsel, Marty  
17 Teckler, T-e-c-k-l-e-r.

18 Q Now, did you prepare this memo?

19 A I prepared the memo, yes.

20 Q Now, after preparing this memo, did you  
21 have a discussion with Mr. Bowles about it?

22 A I don't recall. I may well have.

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1 Q Now, in the memo --

2 A I probably did. We met around his  
3 conference table frequently and I probably did  
4 discuss it with him.

5 Q Now, in this memo, you indicate that the  
6 U.S. Attorney had met with Mr. Hale and his attorney  
7 on August 6, 1993 and presented him with a draft  
8 indictment, with respect to allegations that Hale and  
9 two other individuals defrauded the United States, in  
10 particular the SBA, in 1988; is that correct?

11 A That's correct.

12 Q And you also gave him a copy of the draft  
13 indictment that they gave Mr. Hale?

14 A That is correct.

15 Q Now, after giving this information to  
16 Mr. Bowles, do you recall what, if any, statements he  
17 made with respect to this draft indictment or memo?

18 A I don't recall. If there was anything, it  
19 would have been, well, continue to do what you are  
20 doing.

21 Q Do you know whether or not he conveyed this  
22 information to anyone else that the point?

1 A No, I don't.

2 MR. IVEY: Is this a good place to break?

3 MR. GICALE: Off the record for a second.

4 (Discussion off the record.)

5 (Whereupon, at 12:58 p.m., the deposition  
6 was recessed, to be reconvened at 1:30 p.m. this same  
7 day.)  
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1 AFTERNOON SESSION (1:56 p.m.)

2 Whereupon,

3 WAYNE FOREN

4 resumed the stand and, having been previously duly  
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. GICALE:

8 Q Mr. Foren, I need to ask you a few more  
9 questions and then Mr. Brenner from our office will  
10 be asking you a few questions.

11 To go back, you indicated that you notified  
12 Mr. Bowles on May 5th, 1993 of your intent to call  
13 the Inspector General, and notify the Inspector  
14 General with respect to this matter; is that correct?

15 A That is correct.

16 Q Why did you notify Mr. Bowles?

17 A I notified him for two reasons: one reason  
18 was he was the administrator of the agency. This was  
19 a significant event with a problem company, relating  
20 to a problem company. The other reason was I knew  
21 that David Hale, by his own claim, he claimed to have  
22 access to the President, he had access to the



1 governor, and I knew he had access to the chairman of  
2 the Senate Small Business Committee. And I felt that  
3 it was important that he know the facts of the  
4 decision which I was about to make, and I felt this  
5 was a case that he needed to be briefed on.

6 Q Now, was it your practice to brief  
7 administrators with respect to referrals like this to  
8 the Inspector General, or for instance, the FBI?

9 A If it was -- generally, yes. If it were a  
10 case -- if it were to be a visible case that would  
11 come to his attention, yes. And Erskine had advised  
12 me that he was interested in knowing what was going  
13 on as the program continued. He didn't -- he wanted  
14 to be more of an active player than a passive player  
15 in the program, and he wanted to be kept informed of  
16 significant events in the program.

17 And I believe this one was significant  
18 because I believed it had the visibility that could  
19 reach his office.

20 Q Were there other matters under your  
21 jurisdiction that had been referred to the Inspector  
22 General's Office, or significant events that you made

1 Mr. Bowles aware of during this time period?

2 A I don't recall specific ones but I am sure  
3 there were. Remember, he was just taking over.  
4 There were not -- I had not briefed him on particular  
5 cases up to this point. The answer is no, I had not  
6 briefed him on particular cases because he was the  
7 next day becoming the administrator.

8 I had briefed him before on policy issues,  
9 the direction we were taking in the program, internal  
10 organizational problems, staffing problems and the  
11 like. But I had not briefed him on case matters.

12 Q Did you brief him on case matters  
13 subsequent, other than this case?

14 A I can remember at least one or two other  
15 SBICs that we had problems with that I briefed him  
16 on.

17 Q Do you recall the names of those offhand?

18 A One was in Florida, I forget the particular  
19 name of it, but it was a case where the company went  
20 into liquidation because they defaulted on a loan,  
21 and we found out later that it had been used as a  
22 vehicle for laundering drug money. That's important

1 and that should come to his attention.

2 Q And you brought that to his attention?

3 A I brought that to his attention. I forget  
4 the name of it.

5 But my practice was, events that I felt  
6 were -- on cases I felt would have significance, it  
7 should come to his attention, I would brief him on  
8 it. When we had problems with a specific portfolio  
9 of companies in New York, that I briefed him on. I  
10 don't want to get into the specifics because it's an  
11 ongoing situation, but it had a significant -- a  
12 significant portion of the specialized SBIC dollars  
13 were in that series of companies, five or six, and it  
14 had some -- it would have had some repercussions  
15 depending on how the matter was resolved.

16 Q Did you brief his predecessors as well --

17 A Yes, yes.

18 Q -- with respect to significant cases?

19 A Yes.

20 Q Did you brief them with respect to criminal  
21 investigations?

22 A I don't recall about criminal, but I would

1 have.

2 Q Inasmuch as the FBI had assumed  
3 responsibility for this and this had become a  
4 criminal investigation, were you concerned about who  
5 should have access to the information with respect to  
6 this case?

7 A You're always careful about who you give  
8 what information to but I believe my supervisor,  
9 second level supervisor, had a need to know this sort  
10 of stuff, but generally, you don't -- you know, you  
11 don't just broadcast the stuff.

12 Q Now, did he tell you, did Mr. Bowles tell  
13 you before he met Mr. McLarty that he was going to  
14 meet Mr. McLarty?

15 A No, he didn't. No, he didn't. His comment  
16 to me was, in passing oh, by the way I met with Mack  
17 McLarty last night, I fully briefed him on the  
18 Capital Management thing. He thanked him for the  
19 briefing and he said continue what you would normally  
20 do.

21 Q When you say he said that, are you saying  
22 that Mr. Bowles said Mr. McLarty said that?

1 A Yes, that's correct.

2 Q Since this was a criminal investigation, do  
3 you believe that it was appropriate for Mr. Bowles to  
4 convey this information to Mr. McLarty?

5 A At the point of -- let's go back to May  
6 5th, okay. At May 5th, we didn't have -- I did not  
7 consider it a criminal investigation at that point.  
8 If you recall, talking time frames, on May 5th, I had  
9 made a referral to the Inspector General to try to  
10 verify the source of assets, and try to get some idea  
11 as to whether they were restricted or encumbered in  
12 any way.

13 I had no idea that we were dealing with  
14 criminal matters at that time.

15 Q Now, when you say that he told you in an  
16 offhand way that he talked to Mr. McLarty, how did it  
17 come up in the conversation? Were you talking --

18 A I was meeting with him on another matter  
19 the following day.

20 Q And what did he say to you about --

21 A And his comment was, regarding Capital  
22 Management, I had a dinner meeting with Mack McLarty

1 last night and briefed him on it -- and I don't  
2 recall the exact words -- but he thanked me for it  
3 and said to continue doing what you normally do.

4 Q And when you say "he thanked me for it," he  
5 was quoting Mr. McLarty's words?

6 A That's true.

7 Q Did he tell you why he briefed Mr. McLarty?

8 A He did not say why. He did not say why.

9 Q Did he tell you he briefed anyone else at  
10 the White House?

11 A No.

12 Q Now, you've testified that you prepared a  
13 number of memos to brief him, and one was -- the  
14 first one was May 5th, 1993, that was a memo; is that  
15 correct?

16 A That is correct.

17 Q Now, did you hand that to him or did he  
18 acknowledge receipt of that memo?

19 A I really don't know. I really do not  
20 recall how, whether I just had my secretary take it  
21 up. I really don't remember whether I talked to him  
22 over the phone, or whether we were sitting at a table

1 and I briefed him. I really don't remember.

2 Q Do you know whether or not he reviewed your  
3 memo of May 5th?

4 A I am sure he would have reviewed it.

5 Q Do you know whether or not he reviewed it?

6 A I do not recall whether -- I really do not  
7 recall whether I sat down, like we are sitting here,  
8 and I gave him to him and he read it and I walked him  
9 through it. I don't remember that. I have done that  
10 frequently. It was either that -- I either picked up  
11 the phone and talked to him about it, and submitted  
12 the memo to him or I picked up the phone and told him  
13 about it and prepared the memo, and we sat down and  
14 talked about it.

15 Q Do you know whether or not he acknowledged  
16 receipt of your memo, and that would be of May 5th,  
17 1993?

18 A If I gave it to him at a meeting, like  
19 where we are sitting here at the table, he would have  
20 received it. But he would have received it because  
21 his secretary would have given it to him. Erskine is  
22 a stickler for detail, and he reads constantly.

1 Q Who was his secretary at the time?

2 A Pam, and she came up from North Carolina  
3 with him.

4 Q Do you know what her last name was?

5 A I don't remember. She went over to the  
6 White House with him as well.

7 Q Now, with respect to the briefing outline  
8 you supplied him on May 19, 1993, do you know whether  
9 or not you handed that to him, and whether or not --

10 A I don't recall.

11 Q Do you know whether or not he reviewed  
12 that?

13 A He would have reviewed it whether I handed  
14 it to him, or whether I had somebody carry it up to  
15 him. I would rather think that I handed it to him  
16 and we used it as a discussion memo. And the reason  
17 I say that is the other memos that I sent him, I  
18 didn't talk to him about. They are in a memo  
19 format.

20 Q When you say the other memos you sent  
21 him --

22 A The August 9th memo and the September 21

1 memo are in a memorandum format. These were sent to  
2 him. So, I believe that the others I sat down and  
3 discussed with him. In fact, I am certain, as I sit  
4 here and think about it, I am certain I sat down at  
5 his conference table and discussed it with him,  
6 because they are prepared in a -- in a briefing  
7 memo -- in a briefing format, where we went over the  
8 subject matter.

9 My approach in dealing with the  
10 administrator, whether he or prior, would have been  
11 to prepare a briefing memo like that for discussion  
12 purposes. A memo where I am communicating  
13 information to him or anybody, I would have done it  
14 in the memorandum format, with a date, a to, a from,  
15 and a subject.

16 So, the memorandums -- the memorandum of  
17 the 5th of May and that of the 19th of May would have  
18 been discussion memorandums, where we sat down at a  
19 table and talked them through.

20 Q The memo of August 9th, 1993, now, that was  
21 a briefing memo which included the letter from the  
22 U.S. Attorney's Office and a copy of the draft

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1 indictment?

2 A That's true.

3 Q Do you know whether or not you discussed  
4 that memo and the attachments, in particular the  
5 letter from the U.S. Attorney's Office and the draft  
6 indictment with him?

7 A I probably did not. I probably submitted  
8 this to him.

9 Q Through his secretary, Pam?

10 A Yes, that's true.

11 Q Now, the submission of the draft of an  
12 indictment is not an everyday occurrence --

13 A No.

14 Q -- you would agree; correct?

15 A That's correct.

16 Q Subsequent to submitting that to him, do  
17 you remember whether or not you discussed it with  
18 him?

19 A I don't remember. I may well have but I  
20 don't recall.

21 Q Do you know whether or not he acknowledged  
22 receipt of it and said thank you for the -- or asked



1 you particular questions about it?

2 A I don't. I really don't recall. He may  
3 well have. I really don't recall. I was in and out  
4 of his office probably once a day, maybe even twice a  
5 day sometimes. And it is a kind of a thing where you  
6 take stuff, send it up, he reads it -- if he wants to  
7 talk about it, he talks about it. Or it's --  
8 discussion is oh, by the way while we are discussing  
9 other things, so I really don't know. I have no  
10 reason to believe he didn't get it.

11 Q Well, by June 14, 1993, you -- I take it  
12 back.

13 In May, sometime in May, I believe, you  
14 learned that the Inspector General had --

15 A We knew by June 14. Actually I knew before  
16 that, because Bob Gardner who was the deputy  
17 Inspector General told me.

18 Q That the matter was forwarded to the FBI?

19 A The matter was referred to the Justice  
20 Department, that they did not have the resources to  
21 do the investigation, so they just referred it on  
22 over.

1 Q Did you believe that the information, at  
2 least from that point forward, took on -- was  
3 confidential?

4 A Oh, sure.

5 Q And should be kept at close hold?

6 A Oh, sure. That's why, if you will notice  
7 my memo of August 9th, it is entitled privileged and  
8 confidential.

9 Q Did you believe at that point that  
10 Mr. Bowles should be taking any information from that  
11 and conveying it to any people outside the Small  
12 Business Administration?

13 A I really -- I guess I never thought about  
14 that perspective, that side of it. I felt I had an  
15 obligation to brief my boss on significant matters  
16 involving the program. And relative to  
17 confidentiality, beyond him, it wasn't something that  
18 I considered, frankly.

19 Q Now, subsequent to giving him the briefing  
20 memo on August 9th, which again had attached to it a  
21 copy of the letter from the U.S. Attorney's Office  
22 and a copy of the draft indictment, what was your

1 next contact with respect to the case and Mr. Bowles?

2 A On September the 21st, I sent Erskine  
3 another memorandum on Capital Management, notifying  
4 him that we had taken the company into receivership,  
5 and that I believe that -- that they expected -- that  
6 we had taken it -- September 21, and that they  
7 expected David Hale to be indicted within a couple --  
8 a few days.

9 Q And that is your attachment P to Exhibit  
10 Number 1; is that correct?

11 A That's correct.

12 Q Did you discuss that memorandum with him?

13 A Again, I do not recall.

14 Q Do you know whether or not he acknowledged  
15 receipt of it or reviewed it?

16 A I do not recall. I expect that he did.

17 Q Now, what is the next time you had  
18 anything -- made any decisions or took any steps with  
19 respect to the investigation of this case or  
20 discussed this with Mr. Bowles?

21 A Well, I do not recall discussing Capital  
22 Management with Mr. Bowles again.

1 We had taken the company into  
2 receivership. David Hale agreed to that and that was  
3 how we were able to get it. That was our objective.  
4 Our liquidation office was handling it. Their role  
5 was to take control of the records and the assets,  
6 and it became just another case matter to be dealt  
7 with in liquidation.

8 Q Now, when did you eventually change  
9 positions?

10 A I was reassigned on October the 22nd,  
11 1993.

12 Q Can you tell me the circumstances  
13 surrounding that reassignment?

14 A There was a case, an application for  
15 license that had been -- that had come in from West  
16 Virginia, by the name of West. W-e-s-t, V-e-n or  
17 V-i-n, one or the other; I think it was V-e-n.

18 Q It was an application for SBIC?

19 A Yes, and the management and the capital  
20 levels were marginal.

21 To put it in perspective, in 1991 part of  
22 the restructuring and revitalization of the SBIC

1 program was the establishment of an advisory council,  
2 an investment advisory council, the purpose of which  
3 was to provide advice and counsel to the associate  
4 administrator for investment which was the position  
5 that I occupied. And that was established pursuant  
6 to the Advisory Council Act. The advisory council  
7 members were appointed by the administrator.

8 In an advisory council meeting on September  
9 the 24th, we had been discussing at length licensing  
10 standards, and factors to be considered in margin  
11 cases. I considered this a marginal case.

12 And we had a subcommittee established of  
13 three or four members. It was a difficult case to  
14 consider, but it was one that had some factors I  
15 wanted some guidance on. So what I did was I  
16 directed the subordinate office director to provide  
17 certain information on management to an advisory  
18 council member to review and get back to me and hold  
19 in confidence.

20 That information was -- the fact that I had  
21 done that was provided, that information was provided  
22 to the applicant who was from West Virginia, who got

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1 exercised, who got in touch with Rockefeller.  
2 Rockefeller put pressure on Erskine. General counsel  
3 concluded that I had slighted SBA's code of conduct  
4 by providing that information to the advisory council  
5 member, and so I was reassigned.

6 Q Providing which information to the advisory  
7 council member?

8 A Information on the management of West Ven.

9 Q Just so that's clear, information you  
10 provided to whom?

11 A To Robert Allsop, A-l-l-s-o-p.

12 Q Who was an advisory --

13 A Advisory council member.

14 Q And so that was deemed inappropriate?

15 A It was deemed by our general counsel's  
16 office to have been -- let's see, he said I violated  
17 the standards of conduct because I directed  
18 information to be given a non-SBA employee. It was  
19 my view that this person was an authorized recipient,  
20 since he was a member of the advisory council  
21 appointed by the administrators, and the counsel was  
22 an organization established pursuant to the Advisory

1 Council Act. And they also said it was a violation  
2 of Trade Secrets Act.

3 I went out and retained counsel and got  
4 their opinion saying it didn't violate the Trade  
5 Secrets Act, but nonetheless I was reassigned.

6 Q How were you notified of the reassignment,  
7 by Mr. Bowles?

8 A Mr. Bowles, yes.

9 Q Did he cite this as the reason for that?

10 A Yes.

11 Q And you were assigned to what position?

12 A Special assistant to the deputy  
13 administrator.

14 Q Who was?

15 A Cassandra Pulley.

16 Q Now --

17 A This is a copy -- you don't have it, but  
18 that is copy of the reassignment, and this is a copy  
19 of the statement by general counsel explaining  
20 Rockefeller's concern. He was going to make a speech  
21 on the floor -- Rockefeller said he was going to make  
22 a speech on the floor criticizing the agency and the

1 admission of the program if Erskine didn't do  
2 anything about it, and so that was Erskine's  
3 reaction.

4 Q Now, you just referenced some documents  
5 that you brought with you to this meeting which we  
6 haven't identified -- just a couple of quick  
7 questions.

8 Up until the time that you were reassigned,  
9 did you brief Mr. Bowles any further -- after your  
10 September 21, 1993 memo to the time you were  
11 reassigned on October 22nd, 1993, did you brief  
12 Mr. Bowles any further with respect to this --

13 A Not with respect to Capital Management.

14 Q And were you aware, at all, about any  
15 allegations Mr. Hale was making with respect to  
16 President Clinton or -- President Clinton,  
17 Mr. McDougal or Mr. Tucker at that point?

18 A I don't know whether I was aware of it at  
19 that time. But if it -- if it were public knowledge  
20 I would have been aware of it. But it would have  
21 been through the newspapers, it wouldn't have been  
22 through other sources.

1 Q Did you have any discussions with  
2 Mr. Bowles about it?

3 A No, I did not.

4 Q Do you know whether or not Mr. Bowles had  
5 any other discussions with Mr. McLarty with respect  
6 to the Capital Management issues subsequent to the  
7 May 5th, 1993 meeting?

8 A No.

9 (Discussion off the record.)

10 MR. BRENNER: I would like to go back on  
11 the record.

12 For the record, my name is Mark Brenner,  
13 and I have taken over for Mr. Gicale. He had a prior  
14 engagement. I hope I can speak up and be in any way  
15 close to as clear as Mr. Gicale, but I would like to  
16 repeat that if there is any question that I ask that  
17 you find misleading or confusing, please don't  
18 hesitate to ask me to rephrase it.

19 EXAMINATION

20 BY MR. BRENNER:

21 Q We were talking about the time around which  
22 you -- your position changed, within the office.

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1 A Right.

2 Q And I want to know, how close in time was  
3 that to Mr. Bowles's recusal from anything related to  
4 Capital Management, if you are aware of that?

5 A I was not aware of his recusal until I was  
6 made -- I was made aware of his recusal -- let me put  
7 it in this context -- by the House Banking Committee  
8 staff in August of this year.

9 Q So Mr. Bowles didn't consult with you --

10 A No, he did not.

11 Q You met with Mr. Bowles on a series of  
12 occasions to talk about various investigations and,  
13 in particular, the Capital Management case?

14 A That's correct.

15 Q You spoke -- you said earlier that you had  
16 a series of memos that you wrote and that you  
17 reviewed with him.

18 Was there anything else that you reviewed  
19 while you were reviewing those memos?

20 A Not that I recall.

21 Q I didn't know if maybe you had reviewed  
22 some of the documents with him from the file, the



1 Capital Management file?

2 A No, I didn't.

3 The -- my approach -- my approach was to  
4 provide a briefing memorandum or discussion  
5 memorandum where I would sit down and go through the  
6 document. I do not recall going through any case  
7 files, which is what I think you are referring to, on  
8 Capital Management with Mr. Bowles.

9 Q But your memos, it is fair to say,  
10 encapsulated many of the major points --

11 A Oh, absolutely, absolutely. He was fully  
12 briefed on the Capital Management case starting with  
13 the significant events back in May of '93.

14 Q I would like to show the witness what has  
15 been Bates stamped as -- I don't know if it is AD  
16 940328019, and on the side it is F, dash,  
17 M-e-y-e-r-s, it is from the U.S. Small -- it's on  
18 U.S. Small Business Administration stationery. It is  
19 a letter dated April 11th, 1994 to the Honorable Jan  
20 Meyers, U.S. House of Representatives, from Erskine  
21 Bowles, administrator.

22 I would like to draw your attention, if I

1 could, to the last sentence of the second paragraph,  
2 starting with "I," and in this Mr. Bowles says, "I  
3 have never reviewed the Capital Management file." Do  
4 you view that as a factually correct statement?

5 A It is possible that he did not review the  
6 hard copy case file. Certainly I did not provide it  
7 to him for review. But Erskine was fully briefed on  
8 Capital Management starting with May of '93, through  
9 September 21, 1993. So literally he probably did not  
10 review the file, but practically he was knowledgeable  
11 of what was in the file.

12 Q On the 21st of September you wrote a memo  
13 relating to the pending indictments related to the  
14 Hale case in the Eastern District of Arkansas. How  
15 did you become aware of the pending Hale indictments  
16 in Arkansas?

17 A The Office of General Counsel of SBA has a  
18 group of several lawyers that are dedicated to  
19 working SBIC liquidation and litigation cases.

20 At that time, they were working closely  
21 with the FBI, together with my liquidations staff.  
22 And I was briefed by the person in charge of the

1 litigation -- office of litigation, in the general  
2 counsel's office, together with my director of SBIC  
3 liquidations.

4 Q I would like to go backward to the time at  
5 which Mr. Hale's office was -- when the documents  
6 were seized from Mr. Hale's office. When did you  
7 become aware of that?

8 A We became aware of that after it occurred.  
9 I don't recall when, but we became aware of it  
10 after.

11 Q At that point, did you ask to see the  
12 documents, or were you leaving it up to the FBI?

13 A When -- if I might explain.

14 Q I would appreciate it.

15 A Our standard procedure when we try to put a  
16 company into receivership is to go after the records,  
17 go after the documents.

18 Now, we in August proceeded to throw the  
19 company into liquidation. Prior to that -- so  
20 normally we would just go for the records and that  
21 would be it.

22 In this case, the FBI was -- had sought

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1 information and we had provided it to them. We were  
2 assisting them, at least in June, up to July 20 when  
3 they seized the records. After that, we were working  
4 in concert with the FBI, and it was that relationship  
5 that brought the information to me relative their  
6 pending indictment. When we became aware they had  
7 seized the records, I would suppose my office became  
8 aware of it soon thereafter. I don't recall the  
9 specific date but I know it was after July 20.

10 Q Do you -- have you had, prior to that date,  
11 any contacts with anyone from the White House  
12 counsel's office related to the Hale case?

13 A No, I did not.

14 Q Were you aware of anyone, including  
15 Mr. Bowles, having any contacts with anyone from the  
16 White House counsel's office?

17 A No, I am not.

18 Q Did you do an investigation into some of  
19 Mr. Hale's Capital Management transactions before you  
20 briefed Mr. Bowles?

21 A Well, our office of examination performed a  
22 regulatory compliance examination where they looked

1 at certain transactions, but I did not brief  
2 Mr. Bowles on specific transactions.

3 Q Did any of the transactions that were  
4 investigated or looked at include either  
5 Mrs. McDougal or Jim Guy Tucker?

6 A They were part of the transactions that  
7 were of concern during the compliance exam, I  
8 believe. And it had to do with the value of the  
9 assets, the loans or investments, and why they  
10 weren't reserved.

11 See, the agency was concerned about the  
12 quality of the portfolio, believing them to be  
13 arm's-length transactions, believing that there was  
14 no fraud involved.

15 And so the major discussions revolved  
16 around two or three things: One, what is the value  
17 of these assets; two, are these legitimately minority  
18 small businesses; and three, why is there this  
19 swapping of assets going back and forth, which was a  
20 practice that Hale started, which -- and I don't have  
21 a copy of the letter, but I do recall signing a  
22 letter directing him to cease and desist the practice

1 of swapping assets.

2 But, going back to the loans that you  
3 referred to, any concern about the loans would have  
4 been in the context of -- at that point, would have  
5 been in the context of valuation, not the question of  
6 who the loans were made to.

7 Q At some point thereafter, did you become  
8 aware of the importance or significance of the  
9 individuals that were -- that the contracts were  
10 with?

11 A Yes, but I don't recall when.

12 Q In your years of experience, is it fair to  
13 say that you would not view either Mr. Tucker or  
14 Mrs. McDougal as one of the individuals who would be  
15 considered an appropriate person to loan money to  
16 through this special program?

17 A Neither one of them were eligible. Neither  
18 one of them were socially or economically  
19 disadvantaged.

20 In the minds of some there has been  
21 discussion that women automatically as a group  
22 qualify as a disadvantaged person and the answer is

1 no, not as a group.

2 So, clearly neither of them were eligible  
3 recipients for the program.

4 Q I want to turn your attention to May 13,  
5 1993. Did you have any contact with Mr. Hale on that  
6 day, or the days just prior to that day?

7 A I don't recall having any contact with  
8 them.

9 Q Do you recall Mr. Hale requesting that you  
10 attend a meeting with Jim Guy Tucker and a  
11 representative of the Arkansas Development Finance  
12 Authority?

13 A Yes, I do.

14 Q What was your response to that request?

15 A My response was there will be no -- I will  
16 not attend a meeting. It is inappropriate for me to  
17 attend a meeting on this kind of a subject called by  
18 David Hale while we're -- we have made a referral for  
19 investigation of his company. I had Claude Cooper  
20 respond to David Hale.

21 Q I would like to switch focus somewhat.

22 Were you aware of records being provided to

1 Congressman LaFalce's small business committee in the  
2 House of Representatives relating to the Hale case?

3 A No, when did that occur?

4 Q Around the time of November 22, 1993 there  
5 were certain requests --

6 A That was after I was reassigned.

7 Q I didn't know if in your new position or  
8 through your other contacts in your office you may  
9 have become aware of this.

10 A No, all -- well, I shouldn't say no.

11 I was aware that the committee had looked  
12 at the matter, because I was told indirectly that one  
13 of the staff members had looked at information  
14 relative to the case.

15 Q And were you aware that there were  
16 documents produced by the SBA to that House  
17 committee?

18 A All I was told was that Tom Powers had  
19 looked at the matter and was satisfied, whatever that  
20 meant. But I was not aware that the documents had  
21 been provided. Obviously he had to look at  
22 something, but I was not in the information loop. In

1 my position as special assistant, it was a name  
2 only. I had three conversations with Cassandra, one  
3 on October the 22, 1992 -- '93. The next  
4 conversation of substance I had with her was on  
5 December the 2nd, 1994. So, you know, I was there  
6 nominally as special assistant.

7 Q I thought that you might have learned about  
8 some of these things because obviously you had been  
9 in the Small Business Administration for a number of  
10 years, and while not all contacts are formal, in any  
11 organization --

12 A Obviously I knew that something had to have  
13 been provided because I knew that Tom Powers had  
14 reviewed the matter and was satisfied that there was  
15 no wrongdoing on the part of my leadership, which was  
16 of -- which gave me considerable comfort.

17 Q I wanted to turn back to what seems to be a  
18 date of some interest, and that would be the May 5th  
19 and May 6th -- the May 5th discussion you had with  
20 Mr. Bowles relating to Hale and Capital Management.  
21 Did you discuss that with anybody outside of the SBA?

22 A Discuss what? The fact that I had had a

1 conversation with him?

2 Q Yes.

3 A No. I would have had -- I probably would  
4 have discussed it with my deputy, but I don't  
5 recall. You know, I have a practice of not  
6 discussing case matters and this sort of thing  
7 widely.

8 Q Why is that?

9 A It is just -- I guess I have an auditor's  
10 background. I am a CPA and I worked for GAO for  
11 three years. I work as a financial examiner,  
12 financial investigator in the SBIC program and so I  
13 just have a habit of not discussing things  
14 generally.

15 But if I did, it would have been with  
16 people that I worked closely with, such as my  
17 deputy --

18 Q So, it wouldn't be --

19 A -- my wife. You know.

20 Q In other words, it wouldn't be friends of  
21 yours in another institution, say, the White House,  
22 for example, hypothetically? In other words, in an



1 ongoing investigation by the Small Business  
2 Administration of one of the groups or one of the  
3 organizations under its authority, such as Capital  
4 Management, is usually viewed as confidential  
5 information, as you perceive it?

6 A Sure.

7 Q So, Mr. Bowles telling Mr. McLarty about  
8 that confidential information about that  
9 investigation could be viewed by some as a  
10 dissemination to somebody outside of the SBA of what  
11 could be viewed as confidential information?

12 A It could.

13 Q Did you, during the summer or fall of 1993,  
14 have any contact with anyone in the United States  
15 Attorney's office in the Eastern District of  
16 Arkansas?

17 A I didn't but my staff may well have.

18 Q Are you familiar or do you have any  
19 knowledge of any of those conversations?

20 A No. But if conversations were had, they  
21 would have been with Walter Peterson or Phyllis  
22 Dawson or Joe Newell.

1 Q Could you spell those names for the  
2 record.

3 A Phyllis, P-h-y-l-l-i-s, D-a-w-s-o-n, she  
4 was the area chief for the area that the account  
5 executive worked in that handled the case.

6 Walter Peterson was the -- his name is  
7 P-e-t-e-r-s-o-n, he was the account executive  
8 handling Capital Management. Joe Newell,  
9 N-e-w-e-l-l, was the director of the office of SBIC  
10 operations. And what period of time are you  
11 interested in?

12 Q I was referring to the period of time, say,  
13 between May 15, 1993 and September 24, 1993.

14 A Mark Stephens, M-a-r-k, S-t-e-p-h-e-n-s,  
15 was the deputy general counsel for SBIC  
16 liquidations/litigation, and he possibly also could  
17 have been -- he was the one who probably would have  
18 discussed it with him if anybody did. Or one of his  
19 people.

20 Q I am a little curious. In your view or in  
21 your mind, why would Mr. Bowles, at a dinner  
22 discussion with Mr. McLarty, bring up the Capital

1 Management case? I didn't know if you felt the  
2 Arkansas connection would cause him to bring that up  
3 or if there was some reason that you could foresee.

4 A Erskine was a very close friend of the  
5 President -- he is a very close friend of the  
6 President, obviously, and was close to the people in  
7 the White House. The fact that he is now the deputy  
8 chief of staff speaks for itself. This is a case  
9 that the White House may well have been interested --  
10 staff may well have been interested in, based on the  
11 claim -- as I said before, based on the claims by  
12 David Hale. And as I briefed him, thinking that he  
13 didn't want to get blindsided, I suspect he probably  
14 briefed Mack McLarty, not wanting Mack McLarty or the  
15 President to be blindsided.

16 Q I asked and I went back to this because you  
17 said before that you didn't specifically mention  
18 Hale's claims?

19 A To him?

20 Q To him.

21 A That's true.

22 Q To Mr. Bowles?

1 A Not that I recall.

2 Q Not that you recall.

3 But from what you just said, it is your  
4 belief that Mr. Bowles had significant -- sufficient  
5 background knowledge, that he knew that Mr. Hale may  
6 have had some connections to important political  
7 figures?

8 A I may have said -- see, I don't remember.  
9 I may have said to Erskine, here is -- here are the  
10 facts relative to a case that may be of interest.  
11 And I could well have said, I could well have said to  
12 Erskine, look, David claims to have influence --  
13 access to the President. We are setting about an  
14 investigation of him because he is perpetrating --  
15 looks like he is perpetrating a fraud on SBA, who  
16 knows what is going to come out of this. I could  
17 have said something like that. I just don't recall.

18 Q I understand. It is not as if it was in  
19 the recent past. It was a little while ago.

20 But I just want --

21 A Some things you like to put out of your  
22 mind, but the reason I remember -- I got to tell you

1 some things stick in your mind, too. The reason I  
 2 remember the conversation that he and I had that  
 3 following morning -- I don't remember the setting; I  
 4 don't remember the other subjects, but it is  
 5 something that sticks in your mind, when you have  
 6 your boss say by the way, I just had a dinner meeting  
 7 last night with the chief of staff of the White House  
 8 and I briefed him on the case and he said fine, do  
 9 what you've got to do. Those things stick in your  
 10 mind. If he had said I had a meeting with somebody  
 11 over at Treasury, it wouldn't have stuck in my mind.

12 MR. BRENNER: I actually think that that's  
 13 it for now. It is my turn to turn this over.

14 MR. IVEY: You sound surprised. Off the  
 15 record. Let's take a short break.

16 (Recess.)

17 EXAMINATION

18 BY MR. IVEY:

19 Q Good afternoon.

20 A Good afternoon.

21 Q I don't have too many questions, but I have  
 22 a couple of areas that I wanted to cover that were

1 discussed by the Majority.

2 I wanted to ask you about the May 5th, May  
 3 6 period since I think that's the real action here.

4 MR. BRENNER: A big shock to all of us.

5 BY MR. IVEY:

6 Q Now, you said that -- or you testified that  
 7 you talked to Mr. Bowles on May 5th about the  
 8 referral of CMS to the IG's office; is that correct?

9 A Yes, that's correct.

10 Q And why did you talk to Mr. Bowles about  
 11 that?

12 A Because I wanted him to know the decision  
 13 that was being made, and the reason I wanted him to  
 14 know was I wanted to know whether he wanted us to do  
 15 the referral before he was confirmed or after he was  
 16 confirmed.

17 Q Were there other reasons why you wanted him  
 18 to know?

19 A That was it primarily.

20 Q And you said that his reaction was to  
 21 handle it --

22 A He said do it before close of business

1 today. What I did was I called him and told him what  
2 I was dealing with, and then that was his reaction.  
3 Then I have gave him the briefing memo and I believe  
4 I sat down and discussed it with him for the reasons  
5 I discussed earlier.

6 Q Did Mr. Bowles express any reluctance about  
7 pursuing this investigation of CMS?

8 A No, he did not.

9 Q Did you at that point or at any other point  
10 feel that Mr. Bowles did not want you to pursue the  
11 investigation or did not want the investigation to be  
12 pursued with respect to CMS?

13 A No.

14 Q Did he ever do anything that you felt  
15 obstructed or impeded the investigation of CMS?

16 A No, he did not.

17 MR. BRENNER: For the record, CMS is  
18 Capital Management Services.

19 MR. IVEY: Thank you.

20 BY MR. IVEY:

21 Q Was there any concern with respect to  
22 Mr. Bowles that the media might take interest in the

1 investigation of CMS? You mentioned something about  
2 him being blindsided?

3 A Any time -- I didn't think of the media  
4 per se, but any time you have a problem of this  
5 nature, you could get Congressional inquiry, you  
6 could get media inquiry. There could have been  
7 interest on the part of the White House in the case  
8 because of the claim that David had expressed. I  
9 knew that David had the ability -- and had done it  
10 before -- called, as I indicated earlier, Senator  
11 Bumpers and his staff, which resulted in telephone  
12 calls to me. So I just felt that it was important  
13 that Erskine know about this case because it is  
14 something that certainly could easily and probably  
15 would surface to his level from some other source.

16 Q Now, would you think that by Mr. Bowles  
17 contacting someone in the White House, I guess in  
18 this case, Mr. McLarty, would you think he might have  
19 done it for the same types of reasons, potential  
20 concerns about media, Congressional inquiries, a  
21 possibility that this would develop into a high  
22 visibility investigation?

1 A It could, yes.

2 Q Would that strike you as a reasonable basis  
3 for providing that information?

4 A I didn't consider it unreasonable that he  
5 briefed Mack McLarty on it. I was not surprised that  
6 he did.

7 Q Did you think it was illegal or unethical?

8 A I didn't think so.

9 Q And if you had thought it was unethical or  
10 inappropriate, I assume you would have taken some  
11 sort of action to either indicate that to Mr. Bowles  
12 or to address whatever the problems might have been?

13 A Well, I certainly -- irrespective who he  
14 briefed, I would have briefed him, because I felt he  
15 had a right and a need to know as the administrator  
16 of the agency, again, so that he would not be  
17 blindsided.

18 Whether he should brief anybody else is a  
19 matter for him to -- would have been a matter for him  
20 to check with general counsel on, to consider what  
21 exposure, you know, he had or what was proper; what  
22 was improper. It is not -- it was not my role to

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1 decide or to try to advise him on what was proper or  
2 improper for disclosure. That was for him to make a  
3 determination on, taking into consideration counsel  
4 that he would have received from the Office of  
5 General Counsel.

6 Q Are you aware of Mr. Bowles passing along  
7 any information after this dinner with Mr. McLarty on  
8 May 5th?

9 A No, I am not.

10 Q Now, let me, to the extent you can recall,  
11 or Mr. Bowles told you, was this dinner with  
12 Mr. McLarty a dinner party; I mean, were there other  
13 people there?

14 A I got the impression it was just a small  
15 group, maybe he and McLarty only; I don't know. It  
16 was not -- I didn't get the impression that it was a  
17 large gathering. It wasn't an official White House  
18 function or something like that. I just got the  
19 impression that it was he and Mack McLarty and  
20 whoever went to dinner.

21 Q Just having dinner?

22 A Yes.



1 Q Did you get the impression it was sort of a  
2 meeting?

3 A A social engagement.

4 Q A social engagement.

5 I know those of us in government tend to  
6 use the word "briefing" for almost any conversation  
7 that's relevant to whatever substantive thing we work  
8 on. But I take the word to mean sort of -- for  
9 example, you had a briefing memo in the Exhibit 1  
10 that was entered, a document which I assume you used  
11 to -- you had an agenda when you went in, there was a  
12 substance to be covered at the meeting and you went  
13 through it point by point.

14 A And that is the case, by the way, with the  
15 two documents, the May 5th and the May 19th. Those  
16 were discussion agendas.

17 Q Now, was it your sense or do you know if  
18 Mr. Bowles did that with Mr. McLarty?

19 A Oh, I don't have any idea what he did. But  
20 he did use the word "briefing."

21 Q He used the word "briefing." By the word  
22 "briefing," I mean, do you know if he was using it

1 in sort of that general sense I described a moment  
2 ago, or did he seriously mean we went through an  
3 agenda with respect to CMS?

4 A I didn't make a distinction. I presume  
5 that he sat down -- he had a dinner meeting with Mack  
6 McLarty and informed him of what was going on with  
7 Capital Management. He could as easily have taken  
8 the outline that I gave him and just walked through  
9 the salient points. It was just a two-page document  
10 that could have been stuck in his lapel pocket or he  
11 could have sat down and said here is what's going on  
12 with Capital Management, a, b, c, d. I don't know.

13 Q So it could have been the level of detail  
14 that you gave him in the briefing paper, or it could  
15 have been just a mention in passing?

16 A I would rather think it is probably a  
17 summary of the briefing I gave him.

18 Q But you are not sure?

19 A I am not sure.

20 Q Now, after the conversation you had with  
21 Mr. Bowles the next day in which he told you about  
22 the conversation with McLarty, did you ever receive

1 any calls from Mr. McLarty with respect to the CMS  
2 investigation?

3 A No, I did not.

4 Q Did you ever receive any calls from the  
5 White House, from officials in the White House with  
6 respect to the CMS investigation?

7 A No.

8 Q Are you aware of any instances in which  
9 White House officials tried to pressure the SBA into  
10 either changing its findings with respect to CMS,  
11 delaying its investigation, impeding the  
12 investigation? Are you aware of any type of evidence  
13 that demonstrates that type of behavior by the White  
14 House?

15 A There was none to my knowledge. And since  
16 I was the program official who was responsible for  
17 all aspects relative to the SBIC program, other than  
18 the IG's function, I would have been aware of it. I  
19 am not aware of it.

20 Q I take it after you relayed -- I am calling  
21 it a referral, but referred the information about CMS  
22 to the IG's office, there was something around the

1 area of six months between the time that you relayed  
2 that information to the time in which Mr. Hale was  
3 indicted.

4 A It is a record.

5 Q That's as fast as you have seen it happen?

6 A That's a record. And the reason for it  
7 very simply is the FBI already had information on  
8 Hale; i.e., the memo they gave us in July of the  
9 fraudulent -- bogus capital increase in loans, and  
10 that's what they indicted him on. So there was  
11 already some information in their files, but when we  
12 gave them additional information, it just shortened  
13 the process.

14 We worked closely with them and our goal  
15 was to get the thing into receivership before David  
16 was indicted because it would have been much harder.  
17 SBICs could run into bankruptcy and avoid  
18 receivership. Receivership is where we take them  
19 over; bankruptcy is where they go into the protection  
20 of the court. And we had at least 12 beat us to the  
21 courthouse and get into bankruptcy before we got them  
22 into receivership, so we were very sensitive getting

1 the company into receivership.

2 It was with Hale's cooperation we did it.  
3 And it was the cooperation of the FBI, SBA and  
4 actually David Hale's cooperation, that allowed us to  
5 get the company into receivership in such a short  
6 period of time.

7 Q So I take it from your testimony about the  
8 expediency in which Mr. Hale was indicted, and your  
9 lack of any evidence or awareness of attempts by the  
10 White House to impede your investigation, that you  
11 are not aware of any attempts to impede the  
12 investigation or protect Mr. Hale whatsoever?

13 A No. If there were, they certainly didn't  
14 work.

15 Q And again, this would have been -- at this  
16 point, Mr. Bowles was in place as the administrator  
17 of the SBA?

18 A May 6 is when he was installed as  
19 administrator.

20 Q 1993?

21 A Yes.

22 Q Mr. Hale was indicted somewhere in the

1 fall --

2 A Mr. Hale was indicted, like in August, he  
3 pled guilty -- no, he was indicted on September the  
4 21st. We took the company to receivership on  
5 September the 15th; he was indicted on September 21.  
6 We got it in just a few days before he was indicted.

7 Q Now, the SBIC program was established by  
8 the Nixon Administration?

9 A Established in 1970, under the leadership  
10 of the Nixon Administration; Maurice H. Stans, who  
11 was the Secretary of Commerce at the time.

12 Q Now, during the course of the  
13 investigation, a good deal of illegal activity was  
14 brought to your attention with respect to CMS?

15 A That's true.

16 Q And CMS, I think, was established 1979?

17 A 1978, under the Carter Administration.

18 Q And a good deal of the illegal activity  
19 that you uncovered was, I think you mentioned 1988?

20 A Actually started in '86. I went back and  
21 looked at the transactions, he perpetrated a fraud on  
22 us, a capital increase in 1986.

1 Q Who was the administrator in 1986 for the  
2 SBA?

3 A Don't hold me to it, but I think it was Jim  
4 Sanders.

5 Q And who succeeded Mr. Sanders?

6 MR. IVEY: Can we go off the record for a  
7 second.

8 (Discussion off the record.)

9 MR. IVEY: Back on the record. You may  
10 give your answer.

11 THE WITNESS: Jim Abdnor succeeded Jim  
12 Sanders, A-b-d-n-o-r; Jim Abdnor, former Senator from  
13 South Dakota.

14 BY MR. IVEY:

15 Q These two administrators were appointees of  
16 Mr. Reagan?

17 A Yes. But if I may give a commentary, the  
18 frauds would not have been perpetrated in '86 or '88  
19 under the Reagan or Bush Administrations, if the  
20 company had not been licensed in 1978 under the  
21 Carter Administration.

22 Q Why is that?

1 A If the company were not a licensee, there  
2 would have been no basis to provide -- there would  
3 have been no opportunity to perpetrate a fraud and no  
4 basis to provide leverage.

5 Q But a company could acquire the license at  
6 any period, since the Act was passed in 1957?

7 A '58.

8 Q Okay.

9 A But I will say this --

10 Q The granting of a license --

11 A It is a privilege, not a right.

12 Q And certainly the granting of a license  
13 prior to any evidence of criminal wrongdoing is  
14 consistent with the law, isn't it?

15 A Yes, there are certain eligibility  
16 requirements.

17 Q And by asking you who the administrators  
18 were in 1986 and 1988, I am not trying to imply that  
19 either of them condoned the activities of Mr. Hale,  
20 but I think it is fair to say that these activities  
21 occurred when they were administrators; isn't that  
22 fair to say?

1 A That's true.

2 Q And the investigation that was conducted by  
3 you, or under your guidance I should say, took  
4 place --

5 A Let's say direction.

6 Q Direction, in 1993?

7 A '92.

8 Q In 1992, again the Bush Administration, I  
9 believe, wasn't it?

10 A Yes.

11 MR. BRENNER: I want to keep this on the  
12 record. I am trying to determine the relevance of  
13 the various Republican Presidents to whether or not  
14 there were problems within the SBA, related to  
15 Capital Management, and the oversight of Capital  
16 Management. Are you trying to imply that either  
17 President Reagan or President Bush was somehow  
18 directly related to that?

19 MR. IVEY: If we want to play the game of  
20 implication, I think the bulk of the Whitewater  
21 investigation revolved around that. I mean if we  
22 want do this on the record, we can; if we want to go

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1 off the record, that's fine.

2 Certainly Mr. Hale pled guilty to  
3 committing fraud with respect to CMS, and this was  
4 rolled into this Whitewater investigation, although I  
5 haven't heard anything from this witness about  
6 Mr. Clinton doing anything to condone and participate  
7 in that fraud.

8 MR. BRENNER: It is one thing to talk  
9 about --

10 MR. IVEY: I think that's clear from the  
11 documents he provided us in advance of the  
12 deposition, so -- it is clear to me -- and we can do  
13 this on the record or off, but I mean it is clear  
14 that this is the implication gained with respect to  
15 Mr. Clinton and I just wanted to lay out the whole  
16 thing.

17 MR. BRENNER: In other words, I think we  
18 are building blocks in regard to the relationship and  
19 contacts between the White House and various  
20 agencies, and for what purpose those blocks were  
21 being built, for what purposes those contacts  
22 occurred, I haven't heard anything in your questions



1 where you are trying to say there were any contacts  
2 between President Reagan and David Hale, or President  
3 Bush and David Hale.

4 So I guess I was more concerned that maybe  
5 we could keep the focus to the administrators, rather  
6 than the President that they served for, unless that  
7 has some relevance to SR 120.

8 MR. IVEY: Well, I thought that the  
9 administrators had been raised by Republican  
10 questioning as to the appointment of Mr. Bowles. I  
11 believe there were also a series of questions about  
12 who preceded Mr. Bowles as administrator and who had  
13 appointed him.

14 If you would like, I guess we could have  
15 the court reporter go back through that, but I am  
16 sure we discussed at least three administrators  
17 during 1992, 1993 period. You know, if you want to  
18 raise a formal objection, you can take it upstairs,  
19 if you would like. I am almost done with the area.

20 MR. BRENNER: As long as you are almost  
21 done with the area, I have no formal objection.

22 THE WITNESS: Can I give an historical

1 perspective relative to this, on this point?

2 BY MR. IVEY:

3 Q Let me ask this question. You began your  
4 investigation during the Bush Administration; is that  
5 fair to say?

6 A I began -- a problem became apparent to  
7 me -- when somebody is going to put non-cash assets  
8 on the table that have questionable value and want  
9 the government to give them \$6 million against them,  
10 to me that's a red flag all over the place.

11 Q That was during the Bush Administration?

12 A That was during the Bush Administration.

13 Q Is it fair to say the actions you took with  
14 respect to CMS were taken irrespective of the  
15 political environment?

16 A Absolutely. Now, let's back it down. I  
17 was appointed in 1991, and given a charge to redirect  
18 and revitalize the SBIC program which meant turn it  
19 around. The SBIC program, over the years, had  
20 problems and solved those problems.

21 But there were a number of SBICs going in  
22 the tank, a number of SBICs going into liquidation,

1 and there were a number of them trying to take  
2 bankruptcy before we could get them into  
3 receivership. And there was a sense that maybe the  
4 program should be shut down.

5 I was appointed by Pat Saiki -- let me back  
6 up. The administrator prior to Pat Saiki, Susan  
7 Engeleiter was concerned about the program and she  
8 had reassigned my predecessor and put somebody else  
9 in on an acting basis to take a look at it and see  
10 what the problems were, and see what we could do to  
11 stabilize what seemed to be a free fall in the  
12 program. And this, remember, is a time when the  
13 economy was in trouble, and banks were going under,  
14 the S&L crisis was at its peak and a lot of SBICs  
15 were going down.

16 My predecessor tried to stop the free flow  
17 and my task was to pick it up from him and develop a  
18 strategy to restructure and revitalize the program,  
19 which we did. I came forward with a proposal, and  
20 within a year, we got a law passed that tightened up  
21 the licensing standards considerably. Under those  
22 improved licensing standards Capital Management would

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1 never have been licensed. We looked at management,  
2 Capital Management -- the capital going into the  
3 company, the management of the company and the  
4 business plan of the company.

5 The point that I am making is, the changes  
6 made to restructure and revitalize, and turn the  
7 program around in 1992, David Hale would never have  
8 qualified to be a licensee in that regard. That I  
9 might add, the putting the floor under the frame, and  
10 turning it around, was done under the Bush  
11 Administration. And it was done at the leadership of  
12 administrators appointed in the Bush Administration.

13 Q That's fine. That's fine. Let me ask you  
14 this --

15 A And there was nothing done by Erskine  
16 Bowles to prevent us from proceeding with putting  
17 Capital Management into receivership. So there was  
18 nothing done in a negative fashion by the Clinton  
19 appointee, nothing done to prevent us from doing what  
20 we knew we had to do.

21 Q Okay. So again, let me go back to my  
22 question.

1 A I am taking the political out of it and  
2 saying --

3 Q Exactly.

4 A -- people who were given responsibility  
5 when the facts were made known to them agreed that  
6 certain actions should be taken to turn the program  
7 around and straighten it out, and deal with case  
8 matters as they should have been dealt with.

9 Q Basically you functioned in an apolitical  
10 environment?

11 A I was a career employee in what had  
12 previously been a political position. And I might  
13 add as a footnote, when I was reassigned I was  
14 replaced by a political appointee.

15 Q Let me see if I can rephrase it. The  
16 actions you took were not based on political  
17 considerations; is that fair to say?

18 A That's true.

19 Q And that's true across the board with CMS,  
20 start to finish?

21 A Yes.

22 Q And if I understand your testimony

1 correctly, the actions you took were not subject to  
2 political pressure from any of the administrators, or  
3 the White House?

4 A That's true. I would get an inquiry from,  
5 like, Bumpers's office but that was constituent  
6 inquiry and once I dealt with it, and explained why,  
7 that inquiry was satisfied.

8 Q So your view of the constituent inquiries  
9 were that they were appropriate as well? That's a  
10 yes?

11 A Yes.

12 Q You were asked a question about whether  
13 Paula Casey had called you to make inquiries on  
14 behalf of Senator Bumpers. Do you know if she was on  
15 Senator Bumpers's staff?

16 A I don't recall having any inquiry, but to  
17 me, I don't have any recollection of being contacted  
18 by Paula Casey.

19 Q Were the people you were contacted by --

20 A If she did, it was to my staff and I was  
21 not made aware of it.

22 Q Were the people you were contacted by

1 Senate Small Business Committee staff?

2 A Yes.

3 Q So you don't recall being contacted by  
4 anyone from Senator Bumpers's personal staff?

5 A No. There was contact, not to me but to  
6 our office -- I didn't handle the inquiry -- by a  
7 former Senator, I believe Congressman Alexander from  
8 Arkansas, but, you know, it was nothing of  
9 significance.

10 Q Now, when your IG transferred this referral  
11 to the Justice Department -- first of all, do you  
12 know what division or section within the criminal  
13 division it was transferred to?

14 A I haven't the foggiest. You would have  
15 to -- you would have to check with Steven Marica, he  
16 would know.

17 Q And I take it there was nothing, to your  
18 knowledge, sinister about that transfer; that was  
19 simply done for matters of resources and expertise?

20 A That was what they said.

21 Q And again, Mr. Hale's indictment followed  
22 shortly thereafter?

1 A Well, the transfer was in May and he was  
2 indicted in September.

3 Q When you first told Mr. Bowles about the  
4 Hale matter, was it your sense that he knew or did  
5 not know Mr. Hale?

6 A I didn't get the sense that he knew Hale.  
7 If he did, you know, I mean he didn't express --  
8 there was no sense in the discussion that he knew him  
9 or that he didn't know him. It was just a matter of  
10 fact. This is the case. He just thanked me for the  
11 briefing.

12 Q With respect to the Hale statement about  
13 his connections with Mr. Clinton, I want to see if I  
14 could just be clear about this. Are you not sure if  
15 you relayed that information to Mr. Bowles?

16 A I don't recall. I may have. I may well  
17 have, but it is also possible I may not have. I  
18 don't recall.

19 Q You don't recall Mr. Hale saying anything  
20 else about Mr. Clinton, other than that he was close  
21 to him?

22 A No.

1 Q At the point when Congressman LaFalce  
2 requested the GAO audit, had you at that point moved  
3 to this special assistant position?

4 A When did he request it? I suspect that I  
5 had been reassigned.

6 Q November 19, 1993?

7 A Yes, I was reassigned on November 22.

8 Q Now, you mentioned the name Tom Powers. My  
9 recollection is that he was a counsel for Mr. LaFalce  
10 at the time LaFalce chaired the House Small Business  
11 Committee?

12 A He was counsel, I believe, for the small --  
13 House Small Business Committee.

14 MR. IVEY: I have no further questions.

15 Off the record.

16 (Discussion off the record.)

17 (Recess.)

18 MR. BRENNER: Let's go back on the record.  
19 I just have a few quick follow-up questions.

20 EXAMINATION

21 BY MR. BRENNER:

22 Q I would like to start out going back to

1 1986, end of the Reagan Administration, and get into  
2 your knowledge, in May of '93, of the relationship  
3 between Capital Management and Susan McDougal. Were  
4 you familiar with that, before you briefed Erskine  
5 Bowles?

6 A I was not -- no, I really did not have a  
7 good understanding of the portfolio. I had no reason  
8 at that point to dig into the portfolio, staff did.  
9 Staff analyzed and monitored the SBICs operations,  
10 but I had no reason to.

11 And as I indicated earlier, the concern of  
12 staff at that time, and the examiners, was is the  
13 portfolio worth what it is being carried at? Are  
14 these legitimate disadvantaged small business  
15 concerns? It was not -- the staff was not concerned  
16 about fraud. They really didn't -- that was not on  
17 the radar screen.

18 Q In determining the valuation and the  
19 ability possibly to recoup some of the money, I was  
20 wondering if you had traced the money, or if somebody  
21 on your staff had traced the money that went to Susan  
22 McDougal, that went to Flowerwood Farms, to where it



1 eventually ended up?

2 A All I know is what was disclosed in the IG  
3 report, and what was disclosed in the House Small --  
4 House Whitewater hearings.

5 Q And from that knowledge, what is your  
6 present belief about the relationship between Susan  
7 McDougal and Capital Management, and where the funds  
8 had ended up?

9 A Well, based on what I now know from the  
10 file and the record, the transaction starts with the  
11 acquisition or starts with about a \$825,000 loan or  
12 financing, or something, from Madison Guaranty, for a  
13 restaurant that -- property and possibly other  
14 properties that were done under the name of Dean  
15 Paul, known as the Dean Paul transactions. And what  
16 happened there was obviously the assets were  
17 overvalued. And of the \$825,000 that was involved, a  
18 sum of \$300-some-thousand was used to pay off  
19 existing mortgages, and 502,000 of those dollars were  
20 deposited in Capital Management's accounts as a  
21 capital increase.

22 And then, of the \$502,000, \$150,000 went to

1 Castle Water and Sewer, which was a business owned by  
2 Tucker. That was done on February 28th, 1986. And  
3 then, on April 3rd, 1986, \$300,000 went to a company  
4 called Masters Marketing, which was owned by  
5 Susan McDougal.

6 And then, about the same time, on February  
7 the 21st, '86, a \$65,000 loan was made to a company  
8 by the name of Steven Smith, ostensibly for a  
9 communication firm for working capital and computers  
10 and stuff. But in reality, much of that money went  
11 into -- to pay off a debt of Kings River Landing,  
12 which was a partnership that Steven Smith, his father  
13 Austin Smith, Jim McDougal and Guy Tucker were in.

14 And according to the House record and some  
15 information in the GAO report, some of the Masters  
16 Marketing money wound up replacing funds that went  
17 into Whitewater, about \$110,000.

18 MR. BRENNER: Off the record.

19 (Discussion off the record.)

20 MR. BRENNER: Back on the record.

21 THE WITNESS: The final point I would like  
22 to make relative to these three companies is none of

1 these loans were repaid. So what you have is a  
 2 situation where money went from Madison into Capital  
 3 Management to pay off existing loans, and then some  
 4 of the money that went into Capital Management was  
 5 returned back to the players in Madison, and the  
 6 loans from Capital Management were never repaid, yet  
 7 SBA provided leverage based on this bogus capital  
 8 increase.

9 BY MR. BRENNER:

10 Q Now, were you aware of any of this in 1993,  
 11 in May of 1993?

12 A No. I was not.

13 Q But you have subsequently become aware of  
 14 this?

15 A Yes.

16 Q And could you just trace again for us the  
 17 Master Marketing money; you mentioned Master  
 18 Marketing?

19 A Well, it is my understanding that of the  
 20 \$300,000, according to the GAO report --

21 Q Are you referring to page 16 on the GAO  
 22 report, 1994?

1 A Let me take a minute here.

2 Q By all means.

3 MR. IVEY: What was the question?

4 MR. BRENNER: The question was --

5 MR. IVEY: She'll read it back.

6 (The reporter read the record as requested.)

7 (Discussion off the record.)

8 MR. BRENNER: Could we go back on the  
 9 record. I just would like you to read his answer to  
 10 the previous question.

11 (The reporter read the record as requested.)

12 MR. IVEY: I think we are still on the  
 13 record.

14 THE WITNESS: Can I add a comment for the  
 15 record? Steven Smith was reportedly a special  
 16 assistant of the then-Governor Clinton. But I don't  
 17 recall whether he was a special assistant at the time  
 18 the loan was made, or whether he had previously been  
 19 a special assistant.

20 MR. BRENNER: I would like to strike the  
 21 last question. We will get back to it, we will get  
 22 into the substance of the question through a series

1 of other questions.

2 BY MR. BRENNER:

3 Q You stated that some \$110,000 of the money  
4 went into Whitewater, of the \$300,000 loan to Master  
5 Marketing, which was owned by Susan McDougal, as you  
6 understood it?

7 A Well, as I understand it, of the \$300,000,  
8 \$111,500 was used to pay on the Flowerwood Farms or  
9 went on the Flowerwood Farms account or loan. And,  
10 as I understand it, the Flowerwood Farms --

11 MR. BRENNER: Back off the record, please.  
12 (Discussion off the record.)

13 EXAMINATION

14 BY MR. DINH:

15 Q Thank you. Mr. Foren, as you know, my name  
16 is Viet Dinh. I am with the Majority side and I'm  
17 sorry to be jumping in and out with so many counsel,  
18 our schedules are rather hectic, we are having  
19 hearings yesterday and today and all of our  
20 coordination is a little hairy, and I hope you will  
21 bear with us. And I thank Mr. Ivey for his patients  
22 in accommodating our conflicting schedules.

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1 I want to ask you a couple of questions  
2 regarding this transaction that you had testified to  
3 earlier. The \$300,000 loan to Master Marketing that  
4 came, as I understand it, from Capital Management  
5 Services?

6 A That's correct.

7 Q The loan was made on April 3, 1986?

8 A Yes, it was.

9 Q Now, Master Marketing is a company  
10 controlled by Susan McDougal?

11 A That was what the record showed.

12 Q Now, did you, in May 1993, have any  
13 knowledge as to the circumstances in which that loan  
14 was made to Master Marketing?

15 A No, I did not.

16 MR. IVEY: Do you say '83 or '93?

17 MR. DINH: '93. I'm sorry.

18 MR. IVEY: Maybe I misheard it.

19 BY MR. DINH:

20 Q Have you come subsequently to any knowledge  
21 as to the circumstances through which that loan was  
22 made to Master Marketing?

1 A Yes, I have.

2 Q Can you describe for us the circumstances  
3 that you have subsequently come to learn?

4 A What I've come to understand is that what  
5 was considered to be an unlinked financing to Master  
6 Marketing, Susan McDougal, was part of an overall  
7 transaction, as I previously explained.

8 I've come to learn that some of the  
9 proceeds of the loan were used for purposes other  
10 than the stated purposes of Master Marketing.

11 Q You stated some \$100,000 went to Flowerwood  
12 Farms?

13 A That's my understanding.

14 Q And would you tell us again -- I know that  
15 you don't have direct knowledge or specific  
16 recollection about this -- but it is your  
17 understanding that some of this money ultimately  
18 ended up to pay off the debts of Whitewater  
19 Development Corporation?

20 A Either directly or indirectly, that's  
21 correct.

22 Q I wanted to get back, not to the specific

1 amounts of money that went to Whitewater through  
2 Flowerwood Farms or the mechanics of the loan, what I  
3 wanted to ask you about is whether, in May 1993, you  
4 had any knowledge of any involvement by then-Governor  
5 Clinton in the making of the loan by David Hale to  
6 Master Marketing in April 3, 1986?

7 A No, I did not.

8 Q Did you subsequently come to any knowledge  
9 with respect to any such involvement?

10 A Yes. There had been claims that that is  
11 the case.

12 Q Can you describe that knowledge to us?

13 A It is my understanding that David Hale  
14 claimed that then-Governor Clinton and McDougal, the  
15 word he uses, pressured him into making the loan.

16 Q That was "pressured him into making the  
17 loan" in 1986?

18 A Yes.

19 Q Now, this claim was not -- this was not  
20 among the claims that David Hale made to you in 1992  
21 with respect to his involvement and knowledge of  
22 then-President Clinton?

1 A No.

2 Q This was not part boast in order to explain  
3 the third million dollars?

4 A I understand the question now. No time did  
5 David Hale boast to me that President Clinton was  
6 involved in any financing, directly or indirectly, of  
7 Capital Management.

8 Q This was as of 1992, when he had  
9 conversations with you with respect --

10 A February '93.

11 Q -- to his knowledge of President Clinton.

12 A No, all he -- that's right, no, he did not.

13 Q Did he describe any specific transactions  
14 involving President Clinton at the time?

15 A No, he did not.

16 Q But you have subsequently come to know --  
17 to learn about such allegations?

18 A That's true.

19 (Recess.)  
20  
21  
22

1 BY MR. DINH:

2 Q Just to recap your testimony as I  
3 understand it before the court reporter requested a  
4 break, you were stating that in 1993, as of May 1993,  
5 Mr. Hale had not boasted to you regarding any  
6 specific transactions that Governor Clinton, then-  
7 President Clinton, had been involved in with respect  
8 to Capital Management or Master Marketing?

9 A Right. He did not invoke the President's  
10 name in any transaction.

11 Q But he did generally talk about his  
12 involvement with then-Governor of Arkansas Jim Guy  
13 Tucker, and the then-President of the United States  
14 William Jefferson Clinton?

15 A He claimed -- he boasted that he had  
16 influence with them, and that he could get in to see  
17 them, and, you know, that he had access.

18 Q But these were general claims, and not any  
19 specific description of any particular transactions?

20 A That's true.

21 Q Can you explain to me why he would not  
22 have gone into any specific transactions with respect



1 to, in order to buttress his general claim of having  
2 access with Governor Tucker and President Clinton?

3 A The Tucker one -- it was a matter of  
4 record because Tucker was a borrower. He had been an  
5 owner of a small business concern, and then  
6 ostensibly sold his interest in that concern. So the  
7 fact that Tucker was involved was of knowledge.

8 He would not have explained or boasted  
9 about allegations that the President was involved,  
10 because if the money were used by -- for purposes  
11 other than these small business concerns, that would  
12 be in violation of SBA regulations.

13 So in the case of Master Marketing, Master  
14 Marketing was owned by Susan McDougall. One could  
15 possibly stretch and say her husband was involved,  
16 and that would not be a problem. But certainly  
17 President Clinton or Mrs. Clinton, neither one of  
18 them are an owner of Master Marketing.

19 So to then invoke the President's name  
20 relative to the Master Marketing loan would cause  
21 David Hale to be admitting to a violation of SBA  
22 regulations, which he would not do.

1 Q So because David Hale was the lender of  
2 these monies to Master Marketing, and the allegation  
3 regarding the involvement of then-Governor Clinton  
4 would have implicated Mr. Hale in improper conduct  
5 with respect to the making of that loan --

6 A That's right.

7 Q -- he had an incentive not to disclose the  
8 specifics of that transaction to you, the SBA  
9 administrator overseeing his particular SBIC?

10 A That is correct.

11 Q It would be an admission of, at the very  
12 least, a violation of SBA regulations, and possibly  
13 of criminal wrongdoing?

14 A It would have been the basis for an  
15 investigation referral.

16 Q So while he had an incentive certainly to  
17 boast about and to acknowledge his access to Governor  
18 Jim Guy Tucker and President Clinton, he had a  
19 disincentive to go into the specifics and make  
20 specific allegations with respect to any particular  
21 transaction that Governor Clinton may have been  
22 involved in, and in particular any involvement that

1 Governor Clinton may have had with respect to the  
2 Master Marketing loan?

3 A That's correct.

4 Q Because, to make that allegation then,  
5 that he had been pressured into making the loan to  
6 Susan McDougall, and he had given in to that  
7 pressure, would be an admission that he had  
8 improperly used SBA money in violation of its  
9 regulations?

10 A That's right.

11 Now, I knew that -- I believed. I  
12 believed that he had influence, had the ability -- I  
13 won't say influence -- had the ability to communicate  
14 with Tucker, because he was eager to set up a meeting  
15 with me and Tucker and the Arkansas Development  
16 Finance Corporation to talk about the possibility of  
17 creating a one-stop capital shop that could involve  
18 an SBIC, a certified development company and a  
19 lender.

20 So I believed that he had the ability to  
21 get in touch with the governor and get the governor  
22 into a meeting.

1 That is one kind of influence. Okay. But  
2 then to go to the point of saying people are giving  
3 me money, making donations to me, directly or  
4 indirectly because of influence I have with the  
5 governor, tells me that they're stepping beyond the  
6 realm of propriety.

7 Q And at this time, just to be clear, you  
8 had not -- in February of 1993, you had not made any  
9 criminal referrals with respect to Mr. Hale?

10 A That is true. I had not formed an opinion  
11 in my mind at that point as to whether or not the  
12 capital increase was a legitimate transaction.

13 Q And Mr. Hale, being a very smart man and  
14 being a very savvy businessman and being a very  
15 knowledgeable operator of an SBIC, would not have  
16 wanted to give you any information that would lead  
17 you to a negative conclusion with respect to his  
18 transactions?

19 A That's true.

20 Q Now, you testified regarding a meeting  
21 that Mr. Hale set up with you, Jim Guy Tucker --

22 A He was trying to.

1 Q He was trying to set up. You did not  
2 attend this meeting?

3 A Did not attend the meeting.

4 Q Do you recall the approximate date of this  
5 proposed meeting?

6 A Well, he communicated with a member of my  
7 staff on May the 13th, 1993, and tried to get me to  
8 agree to come down to a meeting in Arkansas that he  
9 was trying to set up.

10 My response at that time was, it's  
11 inappropriate. This is after I made the referral.

12 Q And I know you've gone through this  
13 before. But based on his ability to set up with the  
14 sitting Governor of Arkansas, you believed his boast  
15 that he had influence to be legitimate?

16 MR. IVEY: He already has answered that  
17 one.

18 THE WITNESS: Yes.

19 BY MR. DINH:

20 Q So at the time you had no knowledge  
21 whether or not his boast regarding President Clinton  
22 was -- you had no basis to doubt his boast with

1 respect to then-President Clinton?

2 A Well, let's define "influence." Let's use  
3 the word "access" rather than "influence."

4 I had no doubt that he had access to the  
5 governor, to Governor Tucker. I had no doubt that he  
6 had access to the then-Chairman of the Senate Small  
7 Business Committee, who was a former governor of  
8 Arkansas. And knowing that, I had no reason to  
9 believe that he didn't have access, as appropriate,  
10 to the President.

11 BY MR. BRENNER:

12 Q Were you aware at that time of the  
13 relationship between Mr. Clinton and Mr. Hale?

14 A No.

15 Q Have you subsequently become aware of the  
16 relationship between Mr. Clinton and Mr. Hale?

17 A I've become aware of the allegations of  
18 the relationship.

19 Q Did you know in 1993, in May of 1993, what  
20 Mr. Hale's other profession, what else he did  
21 professionally?

22 A I knew that he was a sitting judge, a

1 municipal court judge, in Arkansas. And I believe he  
2 also had an interest, whether controlling or not, I  
3 don't know, in a small insurance company.

4 Q Do you know who appointed him to that post  
5 as a judge?

6 A Governor Clinton did.

7 Q Did you know that on May 5th, 1993?

8 A Yes.

9 Q When the Minority spoke about the May 5th  
10 dinner meeting, briefing, whatever you decided to  
11 finally call it, the point was brought up that you  
12 couldn't say that there was paper exchanged, that a  
13 document or memorandum had been given to Mr. McClarty  
14 through Mr. Bowles. Is that a fair statement?

15 A I do not know.

16 Q He brought up that you did know that. So  
17 you also didn't know that he could have brought the  
18 whole case file to Mr. McClarty that night?

19 A He wouldn't have brought the case file  
20 because he literally, I don't believe, had access to  
21 the case file.

22 Q But he had access to your memo?

1 A He would have had my briefing memo at the  
2 time, my briefing outline.

3 Q And your briefing outline was compiled  
4 from the records?

5 A Yes.

6 Q And while you don't, it is possible that  
7 he would have transferred that money?

8 A No question about it. The question was  
9 brought up before as to whether I had knowledge of  
10 whether he got that. I believe that, because of the  
11 structure of that memorandum, that is something he  
12 and I set out, and I went over with him point by  
13 point. So I believe he had that memo, or that  
14 outline, that evening.

15 So he certainly would have had the ability  
16 to, had he chose to, provide the paper.

17 MR. IVEY: Could you read the answer back?

18 (Readback.)

19 BY MR. BRENNER:

20 Q Back to May 5th --

21 A Can we forget about May 5th? It didn't  
22 happen.

1 (Laughter.)

2 MR. DINH: For the record, that was  
3 facetious.

4 MR. BRENNER: For the record, I'm trying  
5 again.

6 I believe that we've gone back and forth  
7 on what the probable state of Mr. Bowles' knowledge  
8 was in relationship to Mr. Hale and Mr. Clinton in  
9 terms of when he discussed with Mr. McClarty the Hale  
10 case.

11 BY MR. BRENNER:

12 Q I had asked you before whether or not you  
13 believed it was probable that he would know that  
14 there was an Arkansas link between Mr. Hale and  
15 President Clinton, and Mr. Hale and Jim Guy Tucker.

16 For the record, do you believe that it's a  
17 reasonable assumption that Mr. Bowles had some  
18 knowledge of an Arkansas link, be it with the  
19 President or be it with the sitting governor, Jim Guy  
20 Tucker at that time, and that may have been one of  
21 the reasons Mr. Bowles provided information to Mr.  
22 McClarty at that time?

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1 (Pause.)

2 And that's my last question, by the way.

3 (Pause.)

4 A By virtue of the fact that Capital  
5 Management was an investment company providing funds  
6 to small business concerns in the State of Arkansas,  
7 and Clinton had been the former Governor of Arkansas,  
8 I believe it's reasonable to assume -- certainly it  
9 was on my part, and I believe it's reasonable to  
10 assume on Erskine's part that Clinton may well have  
11 known David Hale, and vice-versa, and that the  
12 Clinton administration would be interested in the  
13 fact that we were making the referral because of at  
14 least potentially improper capital increases in the  
15 company, serious regulatory problems that could lead  
16 to civil or criminal litigation.

17 MR. BRENNER: Thank you. That's all I  
18 have.

19 EXAMINATION

20 BY MR. IVEY:

21 Q There are a couple of answers I'm not  
22 quite sure I followed, so I want to make sure I'm



1 clear on what you said.

2 There was a question about Clinton's  
3 involvement in making the loan, and this would be the  
4 loan from CMS, I guess, to Master Marketing. And I  
5 wanted to make sure I understood that point. The  
6 basis for your knowledge with respect to any alleged  
7 role of Mr. Clinton in that of that loan would be  
8 what?

9 A The basis of my knowledge would be what  
10 you read in the papers, what you hear in testimony as  
11 in the House Banking Committee. It is certainly not  
12 from a review of the file.

13 Q So media accounts, and you listen to the  
14 House Banking.

15 Do you recall whose testimony?

16 A This would have been the GAO testimony and  
17 the people from the regulatory authority, the  
18 examiners.

19 Q RTC?

20 A Yes. I was on a panel on August 9th,  
21 before the House Banking and Financial Services  
22 Committee, testifying in this matter. And they were

1 explaining the flow of funds as a result of their  
2 investigation.

3 Q I guess we've got two different points  
4 here. One is the flow of funds. One is Clinton's  
5 role in this loan with respect to --

6 A The Clinton role in the loan is an  
7 allegation by David Hale. And that's the extent of  
8 my knowledge. In the media, the claim -- I have not  
9 talked to David Hale about it. It is not something  
10 that's been communicated to me directly. I don't  
11 want to give any other impression.

12 Q I think you also mentioned at one point  
13 off the record you were asking questions about the  
14 flow of money. Flowerwood Farms account -- I've got  
15 written down, \$111,500. Then you paused and said,  
16 "You can't say for sure without going through the  
17 transactions." Is that fair?

18 A Yes. What was introduced in the records  
19 in the House, and I have a copy of their exhibits,  
20 and you're welcome to review it, make a copy of it.  
21 It matters not. The introduced bank statements and  
22 other things which suggested \$111,500 of the \$300,000

1 was applied toward the Flowerwood Farm loan.

2 There was another \$25,000 or \$30,000 that  
3 indirectly went to replace money that went into  
4 Whitewater. But that's all documented in that  
5 hearing record.

6 Q Do you have any direct knowledge?

7 A Not other than that.

8 Q Are you aware of any analyses of the  
9 transactions with respect to CMS, Master Marketing,  
10 Flowerwood Farms, Whitewater Development Corporation  
11 which raise questions about whether money actually  
12 ended up in Whitewater Development or not?

13 A See, I have no frame of reference. I have  
14 no reason to get into the specific transactions like  
15 that, because that goes beyond Capital Management.  
16 You'd have to get into these other records.

17 Q And your job was looking at Capital  
18 Management?

19 A My job was strictly Capital Management.  
20 And you see, that is why we didn't know a lot of this  
21 stuff earlier.

22 Q That's fine.

1 Now, Mr. Dinh asked you a question. And I  
2 think the predicate of the question was about Hale  
3 being a savvy businessman and SBIC operator.

4 A I wouldn't say he's a savvy businessman.  
5 Looking at the record, he plays fast and loose with a  
6 lot of things.

7 Q Would you say that he's dishonest?

8 A I'd say that he's a crook.

9 Q Would it be fair to say that actions that  
10 he took with respect to making an over \$13.8 million  
11 entry that had been capitalized in cash, and also  
12 saying that he'd gotten money from the Cayman  
13 Islands, would you say that those two actions were  
14 key in your sensing that CMS might need further  
15 investigation?

16 A Well, it certainly at the outset was an  
17 unusual transaction, okay? And if it were  
18 legitimate, and those non-cash assets could have been  
19 converted to cash in that fund, those funds were made  
20 legitimately available to this small business in  
21 Arkansas, I felt that was important. That was  
22 excellent from a public policy standpoint.

1 But at the same time, if you're dealing  
2 with somebody who's being less than forthright and  
3 trying to manipulate you, you look at it from a  
4 different perspective.

5 So up to a point, I was trying to deal in  
6 good faith, considering that he was being honest,  
7 with integrity. Then after a point, it became  
8 apparent this was not the case, that he was  
9 perpetrating a fraud.

10 And the February 19 meeting is basically  
11 the meeting that caused me to come to the conclusion  
12 we were not dealing with a man of integrity.

13 Q You were also asked about whether Mr. Hale  
14 had an incentive to tell you about his relationship  
15 with Mr. Clinton with respect to transactions, I  
16 guess. And I guess your answer was that he did not  
17 have an incentive to do that. In fact, he had a  
18 disincentive, because it would have indicated illegal  
19 behavior, violations of small business investment  
20 company regulations?

21 A That's right.

22 Q But I suppose he could have bragged about

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1 his relationship in any number of ways. "We watch  
2 football together. We hang out together. We do  
3 transactions in other businesses I own together. I  
4 worked on his campaign" -- whatever, any type of  
5 statement along those lines to show some sort of  
6 relationship with the President?

7 A Well, he claimed at one point -- and I  
8 just considered it hyperbole -- about that time that  
9 he had provided financing to the governor's political  
10 campaigns.

11 Well, you know, I certainly didn't believe  
12 he was going to do it out of the SBIC. I just blew  
13 it off as hyperbole.

14 Q But I guess my question is just --

15 A Sometimes when somebody gets on a roll in  
16 terms of claims, you figure, you know, he's bragging.

17 Q And he could have bragged any number of  
18 ways?

19 A But you see, when he said, "I had an  
20 influence with the President," and "I had influence  
21 with the Governor," you know, to me that's access. I  
22 interpreted that as access.

1 But then when he said, "Well, that's the  
2 reason why people are giving me money," that goes  
3 beyond the level of access into a level of -- you  
4 know, that's dangerous grounds. You're being bribed.  
5 Or there's something wrong with this area.

6 Q Well, it raised concerns because you knew  
7 he was a sitting judge?

8 A Yes.

9 Q And bribery was a concern?

10 A Even if he weren't a sitting judge, to say  
11 "I'm running an investment company. I'm dealing in  
12 financial transactions, and people are giving me  
13 money, millions, tens of millions of dollars, because  
14 of what I can do for them," that's a pretty high  
15 consulting fee.

16 MR. IVEY: Off the record.

17 (Discussion off the record.)

18 MR. IVEY: We can go back on.

19 (Pause.)

20 BY MR. IVEY:

21 Q You gave an answer with respect to the  
22 memo that you'd given Mr. Bowles. And I wanted to

1 make sure I was clear on it. I thought at one point  
2 you had said that you weren't sure if Mr. Bowles took  
3 this memo when he met with Mr. McClarty. Is that  
4 correct?

5 A I still don't know whether he took it.

6 All I know it, I believe -- sitting here today I  
7 believe he had that piece of paper in his hand at the  
8 end of the day on May 5.

9 Q So you mean at work?

10 A Yeah. Because I would have briefed him  
11 before the end of the day, and he and I would have  
12 sat down at the table, at his conference table, and  
13 we would have gone over it.

14 Q Okay.

15 A You see, there is some question earlier on  
16 in this discussion as to whether or not he got that  
17 memo, whether he got the other memos. And it  
18 occurred to me, after we were looking these over, the  
19 reason the format is different is, one is prepared  
20 for discussion purposes, and the other is, like --  
21 "Erskine, here's a memo, if you can read it when you  
22 get a chance."

1 But the outline is what I prepared to give  
2 him a copy of so that we could go down through it  
3 together.

4 Q So you prepared it for your meeting with  
5 Mr. Bowles?

6 A It was prepared for a meeting with Erskine  
7 and I, where I would have verbally briefed him on the  
8 case.

9 Q So that didn't per se have anything to do  
10 with whether he had it?

11 A I don't know whether he had it with him or  
12 not?

13 Q With respect to Mr. McClarty?

14 A All I'm saying is, I believe in my mind  
15 that he had the piece of paper in his possession  
16 after our meeting, after the May 5th business day  
17 closed.

18 Q Okay.

19 A Whether he took that memo along with him  
20 anywhere, or just left it on the table, I don't know.

21 MR. IVEY: That's all from me.

22 MR. BRENNER: Thank you very much.

1 (Whereupon, at 4:45 p.m., the deposition  
2 of WAYNE FOREN was concluded.)

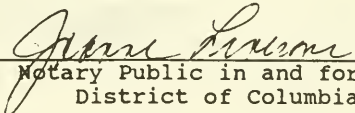
3 I have read the foregoing pages, which  
4 reflect a correct transcript of the answers given by  
5 me to the questions therein recorded.

6  
7 -----  
8 WAYNE FOREN  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000

BRIEFING BOOK PROVIDED TO THE  
SENATE SPECIAL COMMITTEE TO INVESTIGATE  
WHITEWATER DEVELOPMENT CORPORATION AND RELATED MATTERS

IN PREPARATION FOR THE DEPOSITION OF  
WAYNE FOREN  
FORMER SBA ASSOCIATE ADMINISTRATOR FOR INVESTMENT

TO BE HELD ON OCTOBER 26, 1995  
AT ROOM 534 DIRKSEN SOB

SUBMITTED BY WAYNE FOREN  
OCTOBER 24, 1995

October 24, 1995

Viet Dinh  
Special Committee on Whitewater  
534 Dirksen Senate Office Building  
Washington, DC 20510

Dear Mr. Dinh:

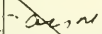
This is in response to your request.

I understand that my deposition on matters relating to Capital Management is now scheduled for Thursday, October 26 at 9:30 a.m.

You also requested that I furnish you a copy of information provided to the House Banking & Financial Services Committee. Enclosed is the information you requested. I have also enclosed a brief profile of Capital Management that may be helpful. The profile was developed after the House hearing.

If you have any questions concerning this matter, please call me on (703) 451-2723.

Sincerely,

  
Wayne Foren

enclosure

## SUMMARY

Capital Management was licensed in 1978 as a Specialized Small Business Investment Company (SSBIC) with \$500,000 private capital. SSBICs may only provide financial assistance to small business concerns owned by persons who are socially or economically disadvantaged. These businesses are to be independently owned and managed and the funds are to be used for the sound financing of the small business and its growth, modernization or expansion.

From 1978 to 1991, Capital Management increased its private capital to \$1.5 million and obtained \$3.4 million in financial assistance (leverage) from SBA. During this period, Capital Management supposedly made 79 financings to eligible small business concerns totaling \$9.8 million. Most of these financings were probably bogus.

In 1992, David Hale claimed that Capital Management had received \$13.8 million in donated assets and then he wanted \$6 million in leverage based on this capital increase.

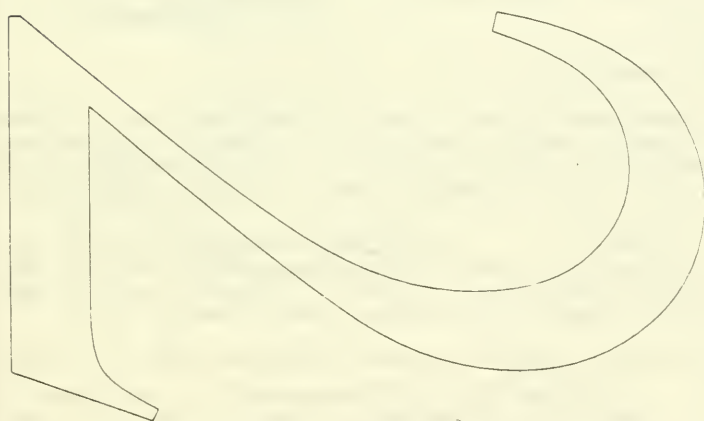
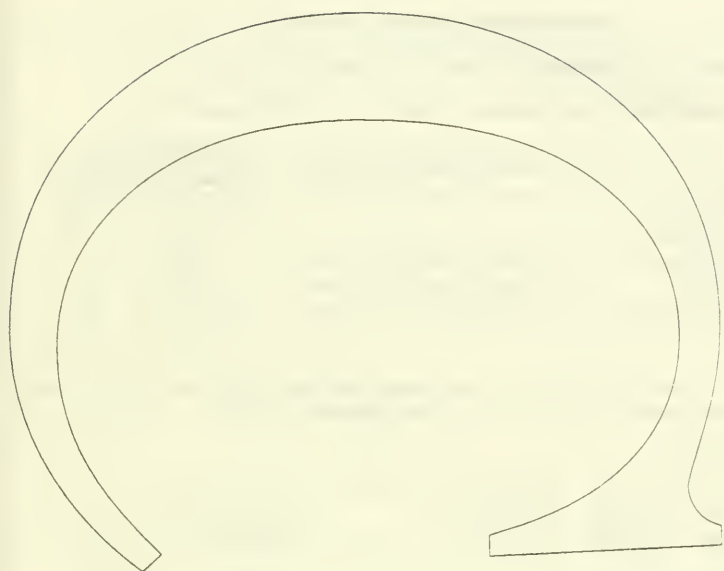
As Associate Administrator for Investment (head of the SBIC Program), I tried to give Capital Management every consideration but at the same time required the licensee to comply with program requirements. On May 5, 1993, it became apparent to me that David Hale was attempting to defraud SBA; therefore, I referred the matter to the SBA Inspector General to determine the source of the donated assets and to assure that these assets were unencumbered or restricted.

This matter was referred on to the Justice Department and the FBI Agent assigned to the case disclosed to our staff that Capital Management's 1988 capital increase was bogus. This transaction was the basis for David Hale's 1993 indictment and SBA's taking Capital Management into receivership in September 1993. As a result of the Whitewater hearing in the House, it became apparent that the 1986 capital increase was also bogus.

Enclosed is a brief profile relating to the capital increases and leverage as well as Mr. Hale's attempt to cover up bogus loans and investments by exchanging assets.

Also enclosed is a chronology of certain events together with supporting documents. These documents were provided to the House Banking and Financial Services Committee.

Profile





## CAPITAL MANAGEMENT PROFILE

DATE LICENSED: March 14, 1978

OFFICERS, DIRECTORS, AND OWNERS: (as of 11/30/92)

| NAME           | TITLE               | OWNERSHIP |         |
|----------------|---------------------|-----------|---------|
|                |                     | Shares    | Percent |
| David Hale     | President/Director  | 2,150     | 70.8%   |
| Linda Sue Hale |                     | 325       | 11.6%   |
| Hazel Dennis   |                     | 325       | 11.6%   |
| Tom Anderson * | Vice President/Dir. | 0         | 0       |
| James Hall     | Treasurer/Director  | 0         | 0%      |
| George Ivory   | Secretary/Director  | 0         | 0%      |
| total          |                     | 2,800     | 100%    |

\* On March 29, 1993, Tom Anderson resigned as an officer and director of Capital Management.

## CAPITALIZATION:

|          |                    |              |
|----------|--------------------|--------------|
| 03/14/78 | Initial capital    | \$ 500,000   |
| 03/25/86 | Capital increase 1 | 502,000      |
| 11/04/88 | Capital Increase 2 | 400,000      |
| total    |                    | \$ 1,402,000 |
| 09/30/92 | Capital Increase 3 | 13,800,000   |
| total    |                    | \$15,202,000 |

## 1. Dean Paul Transaction:

On February 28, 1986, Dean Paul borrowed \$825,000 from Madison Guarantee as an agent for David Hale and Capital Management. The purpose of the loan was to purchase a failed restaurant and two parcels of land. Properties were valued at more than three times their true value.

Loan proceeds net of outstanding mortgages were \$502,000 which were deposited in Capital Management's account. On 3/25/86, Peoples Bank & Trust Co. issued a letter to SBA claiming funds were on deposit and unrestricted.

From these proceeds, Capital Management made two loans:

o On 2/28/86, \$150,000 was loaned to Castle Water & Sewer which was owned by Governor Tucker who at the time was Madison Guarantee's lawyer.

o On 4/03/86, \$300,000 was loaned to Masters Marketing which was owned by Susan McDougal, wife of Jim McDougal.

NOTE: Neither of these loans were repaid. Mr. Hale exchanged the ~~Masters Marketing~~ asset for a note from Cole Masonry (see below). Mr. Cole told the SBA examiners that he needed to do the exchange to "clean up his books".

NOTE: In 1992 when I became aware that Hale was swapping assets (~~one portfolio security for another~~), I directed him in writing to cease the practice.

Stephen Smith loan: On 2/21/86, Mr. Smith received a \$65,000 loan from Capital Management to provide working capital for his communication company. He actually used the funds to pay off a mortgage on a property owned by Kings River Land which was a partnership composed of:

- o Stephen Smith,
- o Austin Smith (Stephen's Father),
- o James McDougal, and
- o Jim Guy Tucker.

It is noted that Stephen Smith had been a Special Assistant to Governor Clinton.

2. 1988 Bogus \$800,000 transactions:

- o On 11/04/88, a Louisiana stockbroker fraudulently transferred \$800,000 from a client's account to Capital Management:

- \$400,000 went into a savings account and represented as a capital increase. Mr. Hale represented that these funds were the proceeds of the sale of his wife's small commercial center.

\$400,000 were in the form of cashier checks to apply to three delinquent loans:

|                           |              |
|---------------------------|--------------|
| Sunbelt Group, Inc.       | \$380,000    |
| Richard M. Grasby, PA     | 11,750       |
| MaBe Communications, Inc. | <u>8,250</u> |
| total                     | \$400,000    |

- o Funds were returned to the brokerage account in November 1988 through three bogus accounts as follows:

| <u>DATES</u>   |                 | <u>PORTFOLIO CONCERN</u>               | <u>AMOUNT</u> |
|----------------|-----------------|--|---------------|
| <u>FROM CM</u> | <u>FROM SBC</u> |  |               |
| 11/8/88        | 11/14/88        | McIntire Numismatic Auctions, Inc.     | \$300,000     |
| 11/9/88        | 11/09/88        | Lame, Inc.                             | 300,000       |
| 11/9/88        | 11/22/88        | River Valley Hydraulics & Supply, Inc. | 200,000       |
| total          |                 |  | \$800,000     |

NOTE: None of these loan/equity positions were converted to cash. Rather, they were exchanged for other securities issued by questionable entities at questionable values (see below).

3. 1992 Donated Assets represented as a Capital Contribution:

- o On 9/30/92, Capital Management represented that two assets were donated valued at \$13.8 million as follows:

|   | <u>MILLIONS</u> |
|---|-----------------|
| Pool certificate of medical receivables   | \$11.5          |
| Capital stock of National Building Supply | 2.3             |
| total                                     | \$13.8          |

Assets were donated by Concorde International, Ltd., an off-shore private investment company in the Grand Cayman Islands.

LEVERAGE:

|    | <u>APPLICATION DATE</u> | <u>FUNDING DATE</u> | <u>DEBENTURES</u> | <u>PREFERRED STOCK</u> |
|----|-------------------------|---------------------|-------------------|------------------------|
|    |                         | 1980                |                   | \$ 500,000             |
|    |                         | 12/09/83            | \$ 500,000        |                        |
| 1) |                         | 09/10/86            | 1,000,000         | 500,000                |
| 2) | 11/04/88                | 03/30/89            | 500,000           | 400,000                |
|    | total provided          |                     | \$2,000,000       | \$1,400,000            |
| 3) | 09/30/92                | not funded          |                   | 1,400,000              |
|    | 09/30/92                | not funded          |                   | 6,000,000              |

NOTES:

- 1) Based on 1986 bogus capital increase.
- 2) Based on 1988 bogus capital increase.
- 3) Based on 1992 bogus capital increase.

## EXCHANGED PORTFOLIO SECURITIES:

A. On 2/15/91 the following securities were exchanged:

| <u>TRANSFERRED</u> |                | <u>RECEIVED</u> |           |
|--------------------|----------------|-----------------|-----------|
| McIntire           | \$300,000      | Med-A-Corp.     | \$420,000 |
| Southern Foods     | <u>113,650</u> |                 |           |
| total              | \$413,650      | total           | \$420,000 |

B. On 4/12/91, the following securities were exchanged:

| <u>TRANSFERRED</u> |               | <u>RECEIVED</u> |           |
|--------------------|---------------|-----------------|-----------|
| Masters Marketing  | \$380,622     | Cole Masonry    | \$400,000 |
| Insurance Econ.    | <u>23,301</u> |                 |           |
| total              | \$403,923     | total           | \$400,000 |

C. On 4/15/91, the following securities were exchanged:

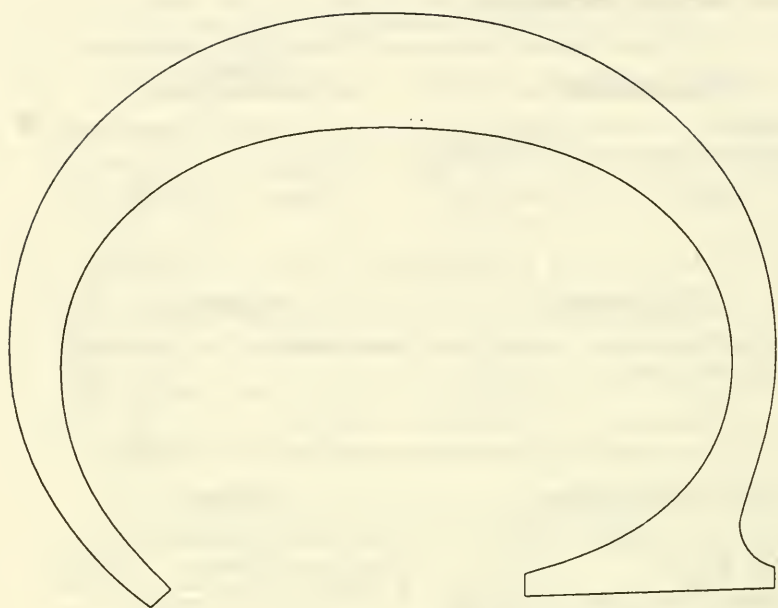
| <u>TRANSFERRED</u>   |               | <u>RECEIVED</u>     |             |
|----------------------|---------------|---------------------|-------------|
| Retail Liquidators   | \$389,776     | Converging Systems  | \$400,000   |
| River Valley         | 248,413       | Cyberspace Corp.    | 350,000     |
| Lame, Inc.           | 300,000       | Patient Commo. Inc. | 250,000     |
| Arkansas Comm. Real. | <u>58,425</u> |                     |             |
| total                | \$938,189     | total               | \$1,000,000 |

C. On 6/1/92, the following securities were exchanged:

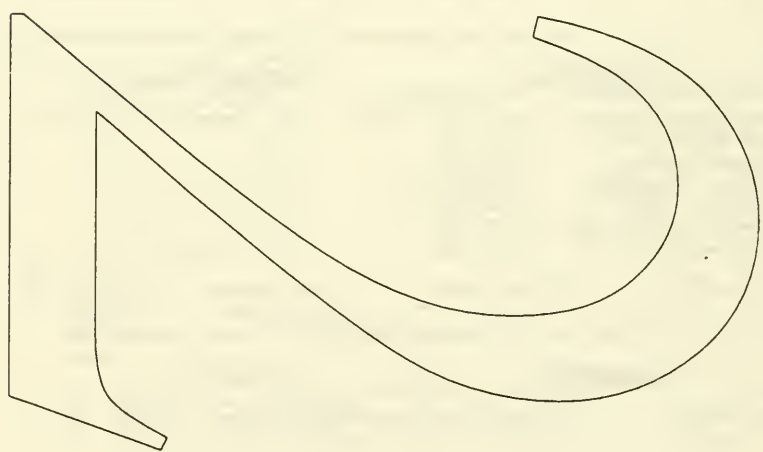
| <u>TRANSFERRED</u> |                | <u>RECEIVED</u>   |             |
|--------------------|----------------|-------------------|-------------|
| Converging Systems | \$400,000      | Ntl. Bldg. Supply | \$2,514,000 |
| Cyberspace Corp.   | 350,000        |                   |             |
| Patient Commo.     | 250,000        |                   |             |
| Liberty Mortgage   | 291,000        |                   |             |
| Property Care      | 314,000        |                   |             |
| Midwest Consultant | 460,000        |                   |             |
| Cole Masonry       | <u>449,000</u> |                   |             |
| total              | \$2,514,000    | total             | \$2,514,000 |

D. On 3/15/93, the following securities were exchanged:

| <u>TRANSFERRED</u> |           | <u>RECEIVED</u> |           |
|--------------------|-----------|-----------------|-----------|
| Med-A-Corp.        | \$420,000 | FSA Fin. Serv.  | \$420,000 |



CHARACTERS





CAPITAL MANAGEMENT  
CHRONOLOGY OF EVENTS

09/30/92 David Hale notified SBA that Capital Management's private capital was increased by \$13.8 million by donated assets.

09/15/92 Capital Management submitted an application for \$6 million of leverage in the form of preferred stock.

A. 10/28/92 Certified letter to David Hale from Phyllis Dawson returning the licensee's application for \$6 Million of leverage in the form of preferred stock.

Requested information on donated assets which formed the basis for the \$13.8 million capital increase:

MILLION

|            |  |
|------------|--|
| \$11.5     | Pool certificate of medical receivables                        |
| <u>2.5</u> | National Building Supply unrestricted, registered common stock |

\$13.8 TOTAL

B. 11/12/92 OGC opinion on Capitalization & Borrowings of SBICs: Inclusion of Donated Assets in Private Capital for Leverage Purposes.

OGC concluded that donated assets are not to be included in regulatory capital until they are converted to cash.

C. 12/08/92 Certified letter to Thomas Anderson, Capital Management, from Marvin Klapp:

- o Conditional approval of the \$13.8 million capital increase but excluding the increase from Regulatory Capital until converted to cash.
- o Approval of exchange of assets subject to the assets received being converted to cash within 120 days.
- o Return of the \$6 million application for funding because the licensee was ineligible for such leverage.
- o Notice that the \$1.4 million application for funding was being processed

- 12/09/92 Mr. Hale was notified that approval of leverage would be subject to a current regulatory compliance of Capital Management.
- 02/19/93 Meeting in AA/I's office with David Hale concerning the capital increase and leverage application.
- D. 03/11/93 Examination report on Capital Management issued. Regarding the source of the contributed non-cash assets,
- Central Arkansas Community Development Corporation Development Company (CACDC) was the source of the contributed assets: National Building Supply (NBS) stock and the Medical Receivable pool certificate.
  - A September 30, 1992, letter to CACDC from First Dominion Financial Group, the custodian holding the pool certificate, stated the pool certificate had been delivered by Concorde International, Ltd. (Concorde) which allegedly was an off-shore private investment company domiciled in the Grand Cayman Islands.
  - Concorde probably was the source of the NBS stock.
  - Thom Anderson, president of CACDC, refused to provide any information concerning the source of contributed assets included whether Concorde was the source
- 03/26/93 Letter to David Hale regarding Examination Report findings.
- E. 04/20/93 Letter from David Hale regarding the Examination Report findings.
- F. 05/05/93 Briefing of Erskine Bowles and referral of Capital Management to the Office of Inspector General for Investigation.
- G. 05/05/93 Chronology of events regarding Capital Management's application for leverage and subsequent referral to SBA's OIG for investigation.
- H. 05/05/93 Letter to David Hale from Joseph Newell (faxed) acknowledging receipt of Mr. Hale's April 20, 1993, letter regarding SBA's March 26, 1993, and April 19, 1993 letters.

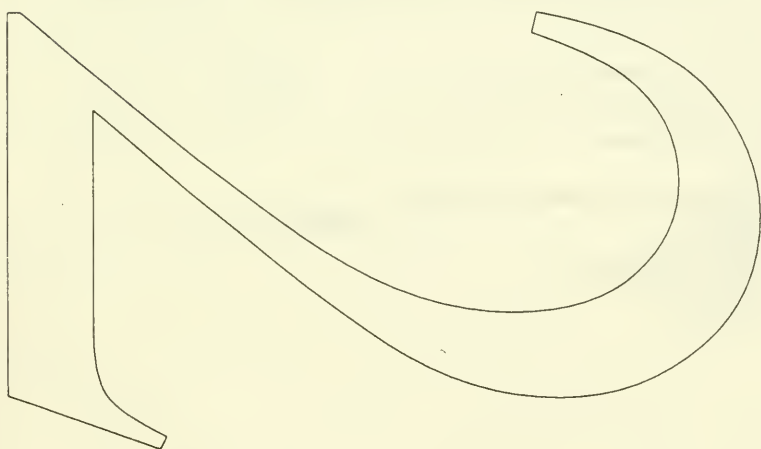
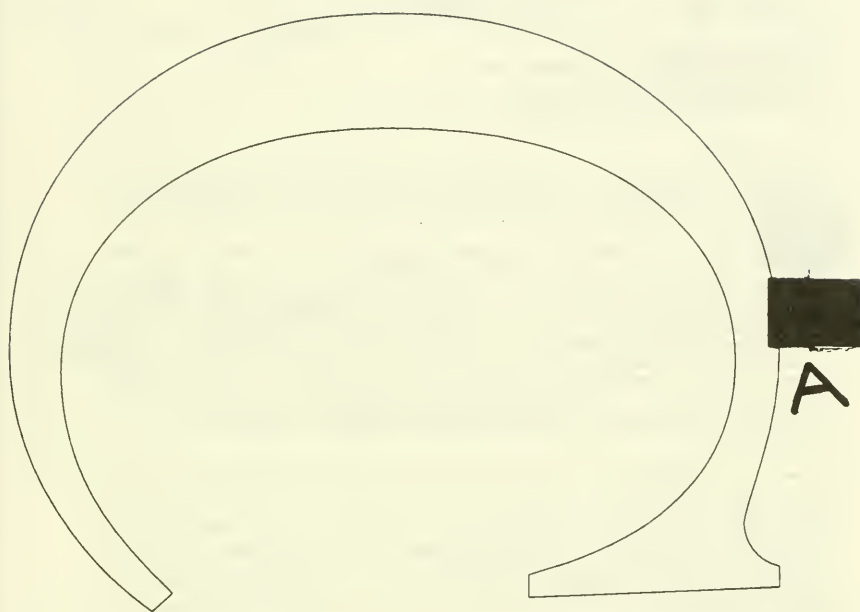
Among other things, this letter notifies Mr. Hale that the information sought regarding donated assets has not been provided, therefore, the matter has been referred to the Inspector General for investigation.

- I. 05/05/93 Letter to Joseph Newell from David Hale (faxed) responding to his May 5, 1993, letter and expressing shock regarding the referral to the OIG.
- 05/06/93 Erskine Bowles' confirmation hearing before the Senate Small Business Administration occurred this date.
- J. 05/13/93 Memo to Wayne Foren from Claude Cooper concerning a phone call from David Hale on 5/13 regarding a possible meeting with Governor Tucker on a Community Bank Concept.
- K. 05/19/93 Briefing outline provided to Erskine Bowles as an update on the status of Capital Management.  
  
Notified Mr. Bowles that Capital management defaulted on Debentures and that SBA was proceeding to liquidation. Capital Management cured the default and we didn't transfer the licensee to liquidation.
- L. 06/14/93 Memo to Charles Mezger and Phyllis Dawson from Joseph Newell regarding a phone call Mr. Newell received from FBI Special Agent David Reign concerning Capital Management. He stated that he was working with the US Attorney's office on Capital Management and he requested specified information.
- 7/20/93 FBI obtained a warrant to seize Capital Management records. Vince Foster found dead in park. Capital Management's Records were seized on next day.
- M. 8/04/93 Memo to Acting ADA/FIP from DAA/I notifying her of fraud against SBA by capital management based on information provided by US Attorney's office of Eastern District of Arkansas.
- N. Undated Memo to ID committee from DAA/I notifying them of a meeting to be held on August 16, 1993 to consider transferring Capital Management to Liquidation.
- O. 08/09/93 Briefing memo to Administrator Bowles from Wayne Foren on developments leading to possible criminal indictment of David Hale.

09/15/93 SBA appointed receiver of Capital Management. This was done with David Hale's agreement.

P. 09/21/93 Memo to Administrator Bowles providing him a status report on Capital Management and notifying him that David Hale was expected to be indicted on September 21 or 22.

10/22/93 Wayne Foren was reassigned by Administrator Bowles from the position of Associate Administrator for Investment to the position of Special Assistant to the Deputy Administrator.





Certified Mail - Return Receipt Requested

OCT 28 1992

License No: 06/06-5207

Mr. David Hale  
Capital Management Services, Inc.  
1910 North Grant, Suite 200  
Little Rock, Arkansas 72207

Dear Mr. Hale:

Enclosed please find your preferred stock application which we are returning because the licensee does not have the requisite amount of regulatory capital for \$6,000,000 of additional leverage.

The licensee's computation of regulatory capital on Page 6C of SBA Short Form 468 should provide a deduction of \$13,759,782 for donated capital which is a non-cash contribution of medical accounts receivable and shares of National Supply Building. Since capital stock was not issued in exchange for the contribution, this deduction should be shown on line 8 (g) Other on Page 6C. At such time as the assets are converted to cash, the amount of cash received may be considered part of regulatory capital. Please refer to Part 107, App. 1 of the Regulations, Analysis of Capital Stock and Paid-In Surplus and Computation of Regulatory Capital, for an explanation.

Please provide details to SBA within 15 days from the date of this letter as to the transaction which gave rise to the donation of other assets to the licensee now included in Paid-in surplus, including the name of the donor, the nature of the donor's business, the nature of the relationship if any between the donor and the licensee, what consideration if any the donor received in exchange for the donation, and copies of any correspondence or agreements between the licensee and the donor concerning the transaction.

Please contact Walter Peterson at 202-205-7594 with any questions.

Sincerely,

(Signed) Phyllis E. Dawson

Phyllis E. Dawson  
Chief, Area II  
Office of Investment

Enclosure

OI: PETERSON/10/21/92:FINAL:MJG:10/27/92

cc: AREA II

PETERSON

INV. 6-5-1

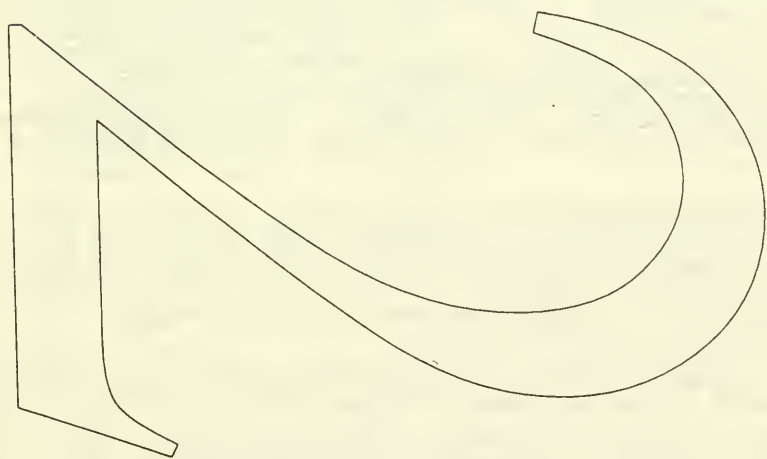
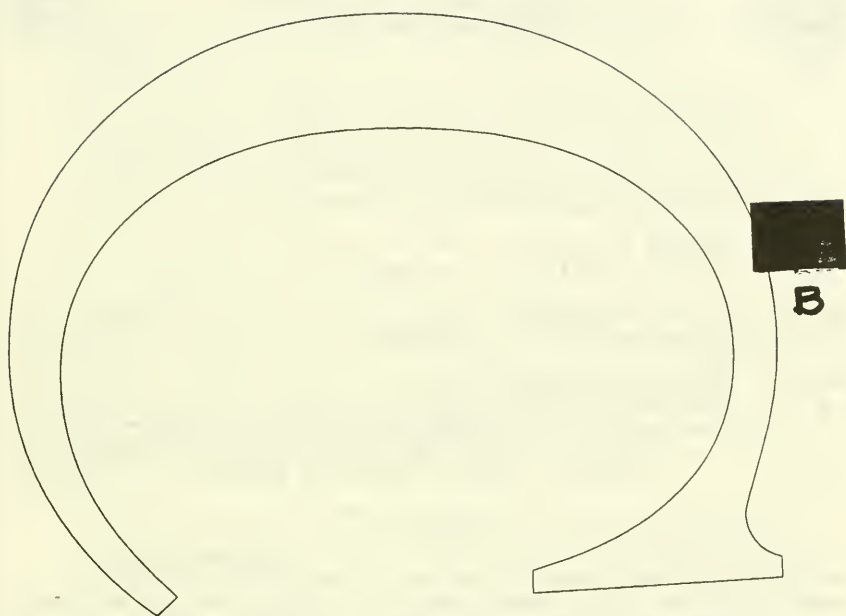
CONTROL # 10/92-047

CODE No. C-3

S:CMSFPD.WP

PETERSON

Donated into  
CDC.





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



DATE: November 12, 1992

TO: Marvin D. Klapp  
Director, Office of Investment

FROM: Howard S. Cooper  
Chief Counsel for Investment

SUBJ: Capital Management Corp.  
License No. 06/06-5207  
Capitalization & Borrowings of SBICs, Private--  
Inclusion of Donated Assets in Private Capital for  
Leverage Purposes; Preferred Stock

Log No. 7311; See also Log No. 7203

It has long been SBA's position that a Licensee may, generally speaking, accept donations of securities or other assets, but that the donated asset will not be regarded as a part of the Licensee's Private Capital for any purpose, especially for leveraging purposes. Amoco Venture Capital Co., Log 4723 (1976); Heizer Capital Corp., Log 4883 (Feb. 4, 1977) and Log 5002 (June 27, 1977); Log 5437 (May 16, 1979); Letter to Dewey Ballantine, Log 5565 (Dec. 20, 1979); VNB Capital Corp., Log 6295 (Sept. 20, 1983); FBS Small Business Investment Co., Log 6300 (Sept. 20, 1983); Hanover Capital Corp., Log 6364 (Dec. 30, 1983); U.S. Bancorp Capital Corp., Log 6885 (Dec. 20, 1988); Letter to Hughes and Luce, Log 6905 (Feb. 2, 1989); Letter to Dover & Dixon, Log 7203 (Aug. 1, 1991).

The memorandum submitted by Ms. Byrnes, Licensee's counsel, does not convince me that the foregoing line of decisions is arbitrary, capricious, and inconsistent with the Act; and that SBA is therefore obligated to include donated assets, to the extent that SBA is satisfied as to their value and/or liquidity, in the recipient Licensee's Private Capital for leverage purposes.

The basic point Ms. Byrnes makes was raised in the letter from Dover & Dixon and responded to more than a year ago:

The Act authorizes leverage to be extended on the basis of a Licensee's "combined private paid-in capital and paid-in surplus". While SBA has issued regulations defining what funds may be included in a Licensee's Private Capital, SBA has not, in the body of the

Regulations, addressed the question of what funds or assets may be included in a Licensee's "paid-in surplus."

What may be included in "paid-in surplus" is described in Appendix II, Account No. 420, which covers, among other things, "the amount of surplus arising from... (5) donations or gifts to the company of assets carried at not in excess of fair market value."

A copy of our response to Dover & Dixon is attached hereto.

If I understand Ms. Byrnes' position correctly, it is that the language of Account No. 420 more closely tracks the intent of Congress than does SBA's past interpretations. But if we are obliged to conclude either that Congress intended to require SBA to recognize donated assets as part of "paid-in surplus" for leverage purposes, or that SBA intended to adopt a policy position that anything included under Account No. 420 should be recognized as a part of a Licensee's leverage base, we are obliged to conclude also that Congress or SBA intended the following scenario as well:

(1) A purchases 1,000,000 shares of the \$1 par stock of Licensee X, representing 100 percent of the Licensee's authorized stock.

(2) A pays \$1,000,000 in cash for the stock. At this point, the Licensee's paid-in capital is \$1,000,000 and paid-in surplus is zero. The Licensee's leverage base is \$1,000,000.

(3) A donates 999,999 shares to the Licensee, but as the holder of the only outstanding share, A still owns 100 percent of the Licensee's stock. A also donates some pocket change, in the amount of \$1. Now the Licensee has a paid-in surplus of \$1,000,000. Has the Licensee's leverage base doubled?

The logic of Ms. Byrnes's position would compel a "yes" answer, since Account No. 420 also covers "donations to the company of its issued capital stock carried as treasury stock at fair market value or par value."

Ms. Byrnes also argues that SBA's definition of "Private Capital", as set forth in §107.3, does not preclude the recognition of donated assets as part of "Private Capital." SBA's regulatory definition speaks of "funds" and she cites Black's Law Dictionary in support of the proposition that the noun "funds" may include "notes, bills, checks, drafts, stocks and bonds, and in broader meaning may include property of every kind", citing State v. Finney, 114 Kan. 12 (1935) 40 P.2d 411,

421. It may be conceded that "funds" is a term whose meaning may vary with the context; but "funds" has also been judicially construed to mean "the proceeds of sales of real and personal estate, or the proceeds of any other assets converted into money". See Black's Law Dictionary citing Doane v. Insurance Co. 43 N.J. Eq. 533 (1887), 11 A. 739 and Illinois Christian Missionary Soc. v. American Christian Missionary Soc. 277 Ill. 193 (1917), 115 N.E. 118. SBA's position that "funds" means "money" is not an unreasonable one.





U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



Michael R. Johns, Esq.  
Dover & Dixon  
425 West Capitol  
Little Rock, Ark. 72201

Dear Mr. Johns:

Your letter of July 23, 1991 asks whether SBA would recognize, for leveraging purposes, the fair market value of certain non-cash assets that the sole shareholder of an unidentified small business investment company (SBIC) proposes to donate to the SBIC. These assets include common stock in a NASDAQ-listed company, real estate, securities of a privately-held company, real estate mortgage obligations, and a portfolio of negotiable automobile loan paper.

SBA will not recognize the fair value of the above-described donated assets as a part of Private Capital for leverage purposes.

"The donated assets would not be considered a part of the SBIC's Private Capital until they are reduced to cash, nor would stock dividends or distributions in kind. Cash dividends or distributions received by the SBIC with respect to the donated securities could be included in Private Capital to the extent that the SBIC chooses to capitalize such earnings."

See SBIC Log No. 6905 (February 2, 1989).

Furthermore, you should be aware that SBA may not allow the SBIC to accept everything that the shareholder may wish to donate.

Your position seems to be based upon a literal reading of Sec. 107.705 of the SBIC regulations (13 CFR, Part 107) and the explanatory language of Account No. 420. You apparently interpret Sec. 107.705 to mean that only assets of the types listed therein may be carried under the "paid in capital" account, and you concede that none of the assets in question in the instant case would qualify under the regulation. However, you then read the explanatory language of Account 420 as requiring SBA to recognize, as a part of "paid in surplus", the fair value of any other asset that might be donated to the SBIC.

If your position is correctly summarized, SBA disagrees but sees no need to address it on its merits. Your attention is directed to the enclosed copy of Page 6C of SBA Form 468, which

makes it clear that SBA does not recognize for leverage purposes the fair value of every asset that a Licensee may acquire.

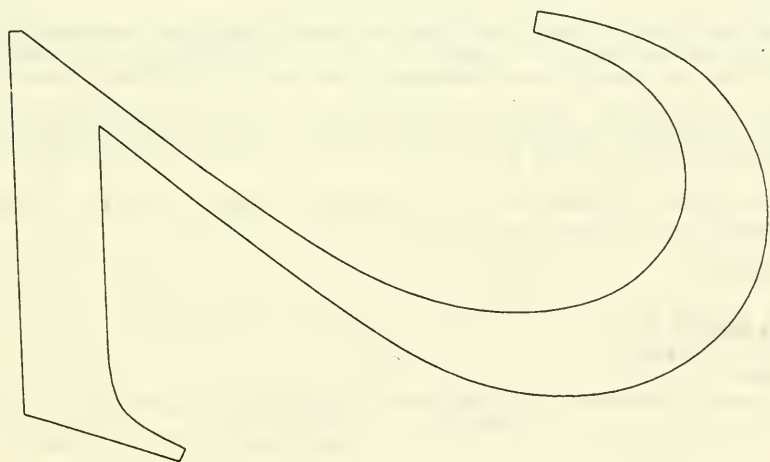
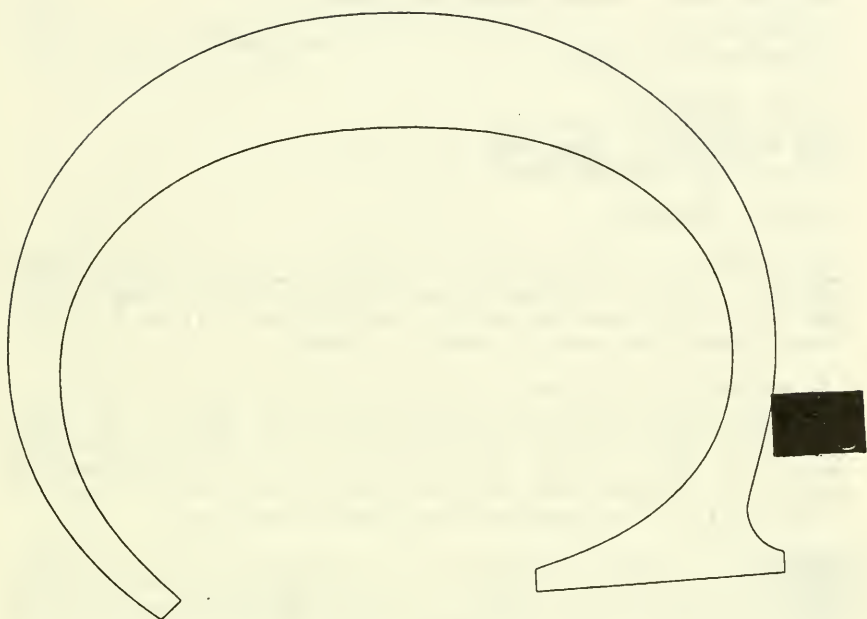
Your attention is also directed to Sec. 107.1004(a), which makes any increase in capitalization subject to "SBA postapproval as a condition for the continuance of the license." Generally speaking, SBA will not allow an SBIC to accept a donation of securities that would effectively cast the SBIC as an entrepreneur doing business through a subsidiary, or any donation that would expose the SBIC to the liabilities or other obligations of the donor, including tax obligations.

In certain circumstances, the financing of a small concern, or a temporary assumption of control over a small concern (with or without the participation of an Associate of the SBIC) may violate SBA regulations unless such action is necessary to protect an investment. Since the donee of a small concern's securities has a zero investment, a financing that would otherwise contravene applicable regulations, or a subsequent assumption of control, would both be absolutely impermissible. For the same reason, SBA will not allow an SBIC to spend money on the improvement of a donated asset.

I trust you understand SBA's position in this matter.

Sincerely,

Wayne S. Foren  
Associate Administrator for  
Investment



Certified Mail - Return Receipt Requested

DEC 8 1992

License No: 06/06-5207

BY FACSIMILE AND MAIL

Mr. Tom Anderson  
Capital Management Services, Inc.  
1910 North Grant, Suite 200  
Little Rock, Arkansas 72207

Dear Mr. Anderson:

In regard to assets recently donated to Capital Management Services, Inc., we understand that such assets were given to the SBIC to increase the size of the licensee and that the donated assets will be converted to cash and then be available to fund minority small business concerns in Arkansas.

SBA approves the increase in capital of \$13.8 million subject to our understanding that the licensee issued no new securities and there has been no transfer of control of the SBIC by any means whatsoever (see Section 107.601 of the regulations governing SBICs). No part of the \$13.8 million will be recognized for regulatory purposes until converted to cash. Borrowing against the \$13.8 million is not considered an asset conversion.

Although the assets received do not qualify as eligible SBIC investments, this office approves the recent exchange of assets (pursuant to Section 107.904(a) of the SBA Regulations), subject to the conversion of these marketable assets to \$2.5 million in cash within 120 days from the date of this letter.

Final approval of the exchange of assets and any requests for funding are subject to the approval of the SBA Standards of Conduct Committee because of your membership on the SBIC Advisory Council.

We are processing the application for \$1.4 million of preferred stock and again returning the \$6 million application which the licensee is ineligible for.

If you have any need for clarification, please call Mr. Walter Peterson. His number is (202) 205-7594.

Sincerely,

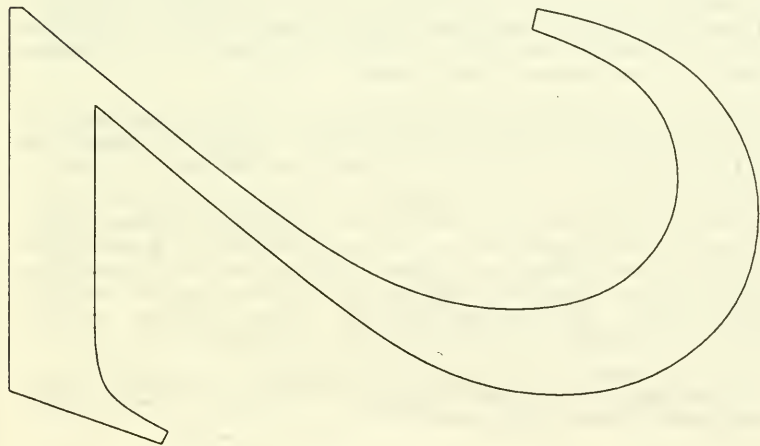
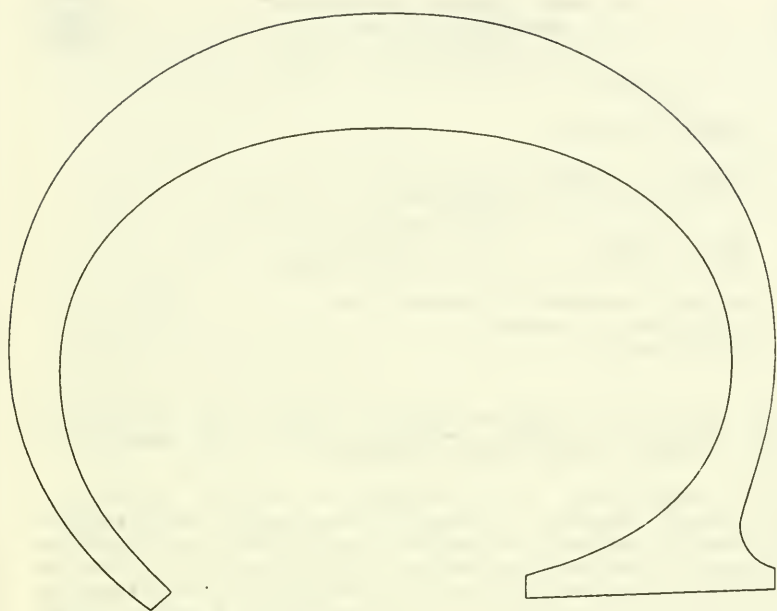
(Signed) Marvin D. Klapp

Marvin D. Klapp  
Director

Office of Investment OI: PETERSON/12/7/92:FINAL:MJG:12/7/92

CC: AREA II  
INV. 6-5-1

PETERSON  
FOREN/ CODE No. C-3 S:CAPMAN2.TAN







U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



Date: March 11, 1993

To: Joseph L. Newell  
Director of SBIC Operations

From: Chuck Mezger *CM*  
Acting Director of SBIC Examinations

Subject: Capital Management Services, Inc.  
Little Rock, Arkansas  
06/06-5207

Attached for your review and appropriate action is our Examination Report for Capital Management Services, Inc. The examination covered the 24-month period ending November 30, 1992.

During the examination, we attempted to obtain information regarding Central Arkansas Community Development Corporation's (CACDC) source for the National Building Supply (NBS) stock and the Medical Accounts Receivable exchanged for assets of, and donated to, the licensee (see Finding 1 and Other Matters). The reason for our concern was that, according to information in a letter dated September 30, 1992 to CACDC from the custodian holding the receivables (First Dominion Financial Group), the receivables had been delivered from Concorde International, Ltd. which, allegedly, is an off-shore private investment company domiciled in the Grand Cayman Islands. We believe that Concorde also may be the source for the one million shares of NBS stock.

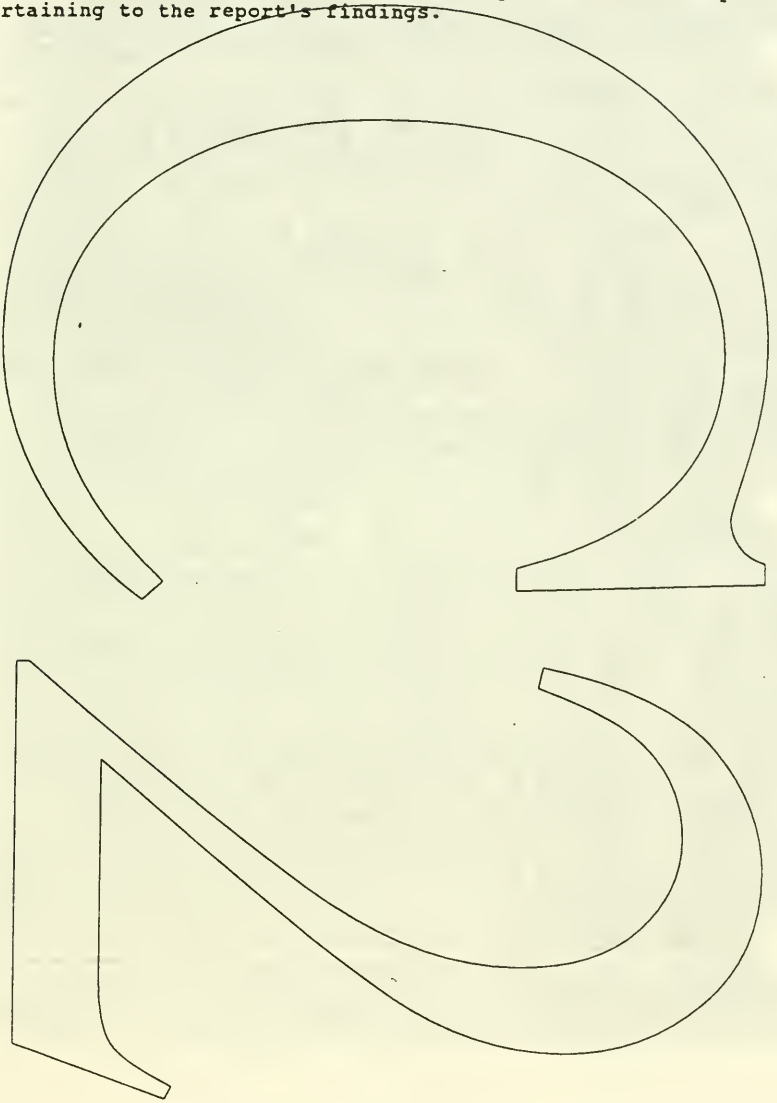
We asked Thomas W. Anderson, president of CACDC, about CACDC's source of the receivables and stock, but Mr. Anderson refused to provide any information, including whether Concorde was the source.

We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACDC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity.

Because of the unknown factors and the findings described in our report, we recommend that the licensee's pending \$1.4 million funding application not be approved.

If you would like to discuss the report's findings, or need additional information, feel free to contact me on 205-7172.

Please provide our office with a copy of your letter forwarding the report to the licensee, as well as any further correspondence pertaining to the report's findings.



SBA

U. S. Small Business Administration  
Small Business Investment Company ProgramExamination  
Report

Investment Division Office of SBA Examinations

Capital Management Sources, Inc.

Little Rock, Arkansas

(06706-5207)

Issued: December 1, 1967

This report was prepared by the Small Business Administration (SBA) in accordance with the provisions of the Small Business Investment Act of 1958, as amended, and the Small Business Investment Company (SBIC) Regulations. It is intended to provide information to the SBA and the public regarding the activities of the SBIC.

This report was prepared by the Small Business Administration (SBA) in accordance with the provisions of the Small Business Investment Act of 1958, as amended, and the Small Business Investment Company (SBIC) Regulations. It is intended to provide information to the SBA and the public regarding the activities of the SBIC.

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## Summary

We conducted an examination of Capital Management Services, Inc. of Little Rock, Arkansas, a Section 301(d) Small Business Investment Company (SBIC). The purpose of our examination was to determine whether the licensee complied with the laws, rules and regulations, and established policies governing the SBIC program. Our review covered financings made by the licensee, as well as administrative and internal controls as deemed necessary.

Our examination disclosed that the licensee:

- transferred assets to an associate without SBA approval;
- created an overline investment in an asset received in exchange for portfolio assets;
- did not properly safeguard its assets during the exchange; and
- misclassified and misrepresented the sale of assets as financings to small concerns.

Our findings were discussed with Mr. David L. Hale, president and director of the licensee during the course of the examination and at an exit conference held January 15, 1993. His comments have been included in the report where appropriate.



## Introduction

### Background

Capital Management Services, Inc. was incorporated under the laws of the State of Arkansas on September 14, 1978 and was licensed as a Section 301(d) licensee by the Small Business Administration (SBA) on March 14, 1979.

The licensee's office is located at 1910 North Grant Street, Little Rock, Arkansas. The licensee's daily operations are managed by David L. Hale, president and director. During the examination period, the licensee elected three new officers and directors. All changes were reported to SBA. See Exhibit 2 of this report for a schedule of the licensee's officers and directors.

The licensee's private capital of \$1,406,310 remained the same; however, in September 1992 the licensee received about \$13.8 million in donated capital (see Other Matters). SBA continues to own \$1.4 million of 3 percent preferred capital stock. Also, there has been no change in the \$2 million in SBA debentures.

An unaudited comparative balance sheet of the licensee, as of November 30, 1990 and November 30, 1992, is shown as Exhibit 1 of this report.

In a letter dated December 9, 1992, SBA informed the licensee that it would accept its application for second tier preferred stock leverage in the amount of \$1.4 million. However, the final decision on the application would require an examination of the licensee.

### Objectives and Scope

The purpose of our examination was to determine whether the licensee complied with the laws, rules and regulations, and established policies governing the SBIC program. Although we reviewed selected general ledger accounts, we did not perform a financial audit, and therefore, do not express an opinion on the licensee's financial statements.

Capital Management Services, Inc. was examined for the 24-month period ended November 30, 1992. During this period, the licensee made 16 financings (totalling \$2,768,297) to 14 small concerns. Our examination included a review of 13 financings (totalling \$2,756,297) to 12 small concerns. This represented 81 percent of the financings made by the licensee during this period and 99.6 percent of the aggregate dollar amount of financings. The on-site phase of our review was completed on January 21, 1993.

Our examination included a confirmation of cash on deposit, a review of cancelled checks, wire transfers and related supporting documentation for disbursements, as well as a review of other financial records.

For the selected financings, we reviewed notes, loan and debenture agreements, stock purchase agreements, financial statements, and/or supporting documentation, including background data on the small concerns and their principals. For selected portfolio concerns, we obtained credit reports and verified the financings by direct confirmation. We also visited four portfolio concerns to observe general operations and verify the terms and conditions of the licensee's financing.

We reviewed the licensee's procedures to ensure dual signatures on checks and to safeguard securities. We also reviewed the licensee's portfolio valuation procedures, as well as the supporting documentation for valuations of loans and investments as of November 30, 1992. To the extent practical, we used the independent accountant's report for the fiscal year ended June 30, 1992.

#### Follow-up on Prior Examination

The prior examination report, which covered the 26-month period ended November 30, 1990, identified regulatory violations regarding inadequate documentation for its portfolio valuation, financing an ineligible concern, not preparing eligibility profiles, exceeding the cost of money limitation and not maintaining dual control over disbursements, all of which have been corrected and resolved to the satisfaction of SBA.

## Findings

### Finding 1: Assets transferred to an associate

~~Section 107.904(a)~~

~~Overline investment - Section 107.710(b)(3)~~

~~Assets not properly safeguarded - Section 107.1003(a)~~

In June 1992 the licensee transferred its investments in seven portfolio concerns to an associate in exchange for \$2,514,000 of a publicly traded stock, the identity of which was unknown to the licensee at the time of the exchange. Because the exchange was made with an associate of the licensee, licensee personnel should have obtained prior approval from SBA but did not do so. In addition, once the stock was received by the licensee in September 1992, the exchange resulted in an overline in that the acquired stock represents 179 percent of the licensee's approved private paid-in capital. In effect, the licensee exchanged approximately 50 percent of its assets, some of which were income producing, without knowing the identity or quality of the stock to be received; the stock has since declined in value.

Section 107.904(a) of the regulations states that except with a prior written exemption from SBA in special instances, a licensee shall not dispose of assets to any associate. As a prerequisite to such exemption, the licensee must demonstrate that the proposed terms of disposal are no less favorable to it than are obtainable elsewhere.

Section 107.710(b)(3) of the regulations, regarding assets-acquired-in-liquidation of portfolio investments, states, in part, that the aggregate amount of the licensee's investment may not exceed the amount allowed under Section 107.303, or 30 percent of private paid-in capital for Section 301(d) licensees.

Section 107.1003(a) of the regulations states that each licensee shall adopt a plan designed to safeguard its assets and monitor the reliability of its financial data.

On June 1, 1992, the licensee assigned to Central Arkansas Community Development Corporation (CACDC) the following portfolio investments in exchange for the future receipt of "\$2,514,000 in public traded stock at least stock traded on NASDAQ" (the assignment agreement did not specify the stock or a time frame for the delivery of the stock):

| <u>Portfolio Concern</u>      | <u>Type and Cost Basis of Investment</u> |                    |
|-------------------------------|--|--------------------|
| Liberty Mortgage, Inc.        | Equity                                   | \$ 275,000         |
|                               | Loan (P) & (I)                           | 16,000             |
| Property Care, Inc.           | Loan (P) & (I)                           | 314,000            |
| Midwest Consultant, Inc.      | Loan (P) & (I)                           | 460,000            |
| Cole Masonry and Construction | Loan (P) & (I)                           | 449,000            |
| Converging Systems, Inc.      | Equity                                   | 400,000            |
| Cyberspace Corporation        | Equity                                   | 350,000            |
| Patient Communications        | Equity                                   | 250,000            |
| Total                         |  | <u>\$2,514,000</u> |

(P) & (I) = Principal and accrued interest

CACDC is a non-profit corporation whose purpose is to provide economic development and services to the community. CACDC's sole owner and director is Thomas W. Anderson who is also the licensee's vice president, assistant secretary, chief financial officer and a member of the board of directors. Because of Mr. Anderson's relationship with CACDC and the licensee, the exchange transaction resulted in disposition of the assets to an associate. No SBA approval was obtained to transfer the assets to an associate; however, SBA is aware of the transaction. In a letter dated December 8, 1992 to the licensee, SBA informed the licensee that approval for exchange of the assets was subject to the conversion of the stock to \$2.5 million in cash within 120 days.

On October 1, 1992; the licensee received confirmation from Merrill Lynch that as of September 30, 1992 ~~one million shares~~ of National Building Supply (NBS) common stock was placed in the licensee's account with a closing bid price of \$4.75 per share. Of the one million shares, 529,263 (\$2,514,000) shares represented the stock that was delivered by CACDC in exchange for the assets, and the balance of 470,737 shares represented a donation of assets to the licensee by CACDC to increase the licensee's capital (discussed later in Other Matters).

Although the licensee's board of director's approved the exchange of the assets in June 1992, the licensee's files contained no evidence as to the extent of the due diligence performed on NBS, except for a copy of the June 1992 Form 10-Q Report. Furthermore, there was no evidence that the board of directors approved acceptance of the stock. According to the licensee's president, the board of directors relied on Mr. Anderson to provide the necessary information on the stock, and the board was informed in September 1992, at an informal board meeting, that the National Building Supply stock was available. The president further stated that Mr. Anderson discussed other stocks but recommended the NBS stock, and the licensee could have refused the NBS stock.

To determine the licensee's potential risk in the NBS stock, we reviewed the June and September 1992 Form 10-Q reports submitted by NBS to the Securities and Exchange Commission. We obtained the September 1992 report directly from NBS.

Our review disclosed that NBS's sales for the three months ended June 30, 1992 were \$792,564, compared to \$2,009,301 for the same period in 1991, which represents a 62 percent decrease. For the six-month period ended September 30, 1992, sales were \$1,598,417 as compared to \$4,105,435 for the same period in 1991, for a 61 percent decline.

Shareholder equity has also decreased significantly. For the three month period ended June 30, 1992, shareholder equity decreased from a deficit of \$332,792 at year end to a deficit of \$560,071. For the six month period ended September 30, 1992, shareholders' equity decreased to a deficit of \$679,135.

In addition to the significant decline in NBS financial position, the Form 10-Q reports indicated that NBS was experiencing liquidity and cash flow problems.

We were also unable to ascertain from reviewing the 10-Q reports when and to whom NBS issued the stock; however, the licensee's one million shares represented approximately 19 percent of NBS's outstanding common stock as of September 30, 1992.

We confirmed the licensee's investment with Merrill Lynch (ML), the brokerage firm holding the stock. ML advised us that the common stock was issued just prior to being sent to them, probably on about September 22, 1992, and the stock is "144 legend stock" which is restricted stock. As to the marketability of the stock, ML informed us that the stock is traded by Over-the-Counter (OTC) dealers, and is marketed by its various market makers. As of our examination date, the stock had a closing bid price of \$4.75 per share, but, as of January 18, 1993, the closing bid price was \$4.00 per share.

We believe that the licensee took an undue risk in exchanging its assets and accepting a stock whose marketability may be limited or unknown, especially since it represents such a large block of outstanding shares. Consequently, the licensee may find it difficult to readily sell the million shares of restricted stock.

Furthermore, the licensee has 179 percent of its private paid-in capital in one investment. SBA has disallowed \$13.8 million of donated assets as paid-in capital for regulatory purposes (see Other Matters); as a result, paid-in capital for regulatory purposes is only \$1,406,310. The licensee's \$2,514,000 in NBS stock represents 179 percent of that amount, an overline under the regulations.



We discussed the events with Mr. Hale, the licensee's president, and Mr. Anderson, who was instrumental in the transactions. Mr. Anderson stated that the reason for the exchange was to provide liquidity to the licensee. He further stated that at the time of the exchange CACDC did not have any stock to give to the licensee, and did not know what stock would be given to the licensee. Regarding due diligence and marketability, Mr. Anderson said the Form 10-Q and K reports were reviewed, and he talked to various market makers. He was informed that the price range for the stock was \$4-5 per share, and that the stock was NASDAQ quality or better. Mr. Anderson also said the stock was restricted, but there is a market for this type of stock, and the latest price was in the \$4-5 range in Tampa, Florida. We also asked Mr. Anderson where CACDC obtained the NBS stock which was then given to the licensee. Mr. Anderson stated that the acquisition was a private transaction, and no details would be given to us regarding the transaction.

As of the conclusion of our on-site examination, none of the stock had been sold.

The investment was recorded as "Other Receivables" on the books of account. In accordance with SBA's Chart of Accounts, the \$2,514,000 investment should be recorded in account 220, "Notes and other securities received on sale of portfolio securities".

#### Licensee's Comments

Mr. Hale, the licensee's president, said it ~~was an oversight in~~ not realizing assets were being sold to an associate, and SBA is aware of the transaction. Mr. Hale also said that the licensee had a valid contract for the delivery of the stock with the right to accept or refuse the stock. Both he and Mr. Anderson thought it was "NASDAQ quality" stock based on the information they had at the time of the decision. Also, Mr. Hale said that he knew that it was 144 stock but did not know what it meant at the time. He further stated that Mr. Anderson knew that it was 144 stock and probably assumed the whole board knew what it meant, and the board depended on Mr. Anderson because of his expertise. Mr. Hale said the licensee plans to sell the stock as soon as possible. ✓

#### Finding 2: Sale of assets misclassified - Section 107.1002(a) Misrepresentation to SBA - Section 107.906(b)

The licensee classified the sales and trades of its investments in portfolio concerns as financings. Furthermore, the transactions were reported to SBA as financings which constituted a misrepresentation of fact because, except in one case, no direct financial assistance was provided to the small concerns.

Section 107.1002(a) of the regulations states that current financial records, including books of account, are to be maintained in all material respects in accordance with SBA's system of account classifications.

Section 107.906(b) states that any false statement knowingly made, or misrepresentation or failure to state a material fact necessary in order to make a statement not misleading in the light of the circumstances under which the statement was made, in any document submitted to SBA constitutes a violation of the regulations.

SBA Policy and Procedural Release #2011, Licensee Reporting for Program Evaluation Portfolio Financing Report (SBA Form 1031) states in Section I that information from these reports is used to demonstrate the value of the "financing" and management services made available to small business concerns by licensed SBICs to Congress, the Executive Branch, and the public at large. This information is also used to monitor the current status and needs of the program. Therefore, SBA is insistent in its requirement that licensees furnish promptly and completely the necessary program data in accordance with the reporting procedures set forth in the release; therefore, Section II requires:

A Portfolio Financing Report (Form 1031) must be sent to the Investment Division of SBA by each licensed SBIC within fifteen days of making a Financing to a small business concern.

Section 107.3 of the regulations defines "Financing" as outstanding financial assistance provided to a small concern by a licensee whether through (a) loans, (b) guarantees, (c) debt securities, (d) equity securities, (e) commitments or (f) purchases of securities of a small concern through or from an underwriter. Sales or exchanges of assets are not included.

During the period examined, the licensee sold or traded its investments in 14 portfolio concerns to 7 other small concerns. No funds, except in one instance, were disbursed to the small concerns purchasing the licensee's investments. The licensee financed the sales by making a loan and/or receiving equity securities in the seven concerns purchasing the investments.

The licensee, however, recognized the sales as financings and recorded the transactions in the portfolio investment accounts, "Loans to Small Business Concerns - Loans" and "Equity Interests of SBCs - Capital Stock of SBCs - Other", instead of recording the transactions as "Notes and other securities received on sale of portfolio securities".

The sales were not "financings," as defined by the regulations, because, except in one case, the purchasing small concerns did not receive any financial assistance. The sales were reported to SBA on Portfolio Financing Reports (SBA Forms 1031) as financings, which was a misrepresentation of the actual transactions.

The specific details for each of the sales/trades follow. The transactions are subcaptioned by the name of the small concern purchasing the licensee's investments:

Autometrics, Inc.

On March 5, 1991, the licensee sold the following investments in portfolio concerns to Autometrics, Inc., for \$330,000:

| <u>Portfolio Concern</u> | <u>Investment</u>      |
|--------------------------|------------------------|
| Multi Marketing          | \$ 400 (E)             |
|                          | 64,368 (P)+(I)         |
| Carens, Inc.             | 75,000 (E)             |
|                          | 81,311 (P)+(I)         |
| Vell Forestry Products   | 490 (E)                |
|                          | <u>182,865</u> (P)+(I) |
| Total                    | <u>\$404,434</u>       |

(E) = equity

(P) = loan principal

(I) = accrued interest

To finance the sale, the licensee made a \$150,000 loan and acquired 490 shares of Autometrics' common stock for \$180,000. Although the SBA Form 1031 showed that the purpose of financing (use of proceeds) was inventory and working capital, no funds were disbursed. In addition, the licensee realized a \$74,434 loss on the sale. As of the examination date, the outstanding balances remained at \$150,000 and \$180,000.

Arkansas Commercial Realty (ACR)

The licensee made a \$227,000 loan to ACR on September 22, 1992. The purpose of the loan was as follows:

|  |                  |
|--|------------------|
| Purchase licensee's investment in      |                  |
| Townsend Financial Services            | \$142,814        |
| Refinance 11/89 \$150,000 loan balance | 47,186           |
| Funds disbursed to ACR                 | <u>37,000</u>    |
| Total                                  | <u>\$227,000</u> |

The SBA Form 1031 submitted to SBA showed the purpose of the financing as working capital when only a small portion (\$37,000) of the total loan funds was actually disbursed. No gain or loss was realized on the sale. As of the examination date, \$211,344 was outstanding.

Property Care, Inc.

On February 1, 1991, the licensee sold its investments in the following portfolio concerns to Property Care for \$275,000:

| <u>Portfolio Concern</u> | <u>Investment</u> |
|--------------------------|-------------------|
| International Trading    | \$188,930 (P)+(I) |
|                          | 18,289 (P)+(I)    |
| Minority Management Co.  | 18,654 (P)+(I)    |
|                          | 36,428 (P)+(I)    |
| Total                    | <u>\$262,301</u>  |

The licensee made a \$275,000 loan to finance the sale, and no funds were disbursed. According to the Form 1031 sent to SBA, the purpose of the financing was for "working capital, leverage and equipment." The licensee realized a \$12,699 gain on the sale. Furthermore, the investment in Property Care was then sold to CACDC in June 1992 (see Finding 1).

Cole Masonry & Construction, Inc. (Cole)

On April 12, 1991, the licensee made a \$400,000 loan to Cole to purchase the licensee's investments in the following portfolio concerns:

| <u>Portfolio Concern</u> | <u>Investment</u> |
|--------------------------|-------------------|
| Master Marketing         | \$380,622 (P)+(I) |
| Insurance Economists     | 23,301 (P)+(I)    |
| Total                    | <u>\$400,923</u>  |

The purpose of the financing reported to SBA on the Form 1031 was "capital-bonding," but no funds were disbursed. In addition, the licensee realized a \$923 loss. Subsequently, in June 1992, the licensee sold, at cost, its investment in Cole to CACDC (see Finding 1).

Midwest Consulting (Midwest)

In April 1991, the licensee sold its investments in the following portfolio concerns to Midwest in exchange for a \$410,000 loan:

| <u>Portfolio Concern</u>  | <u>Investment</u> |
|---------------------------|-------------------|
| Paul Sales Co. (2 loans)  | \$387,715 (P)+(I) |
| Warren Shell Construction | 15,004 (P)+(I)    |
| Old Country Deli          | 9,865 (P)+(I)     |
| Total                     | <u>\$412,584</u>  |

The SBA Form 1031, submitted to SBA by the licensee, showed the purpose of the financing as "security, bonding, and working capital"; however, no funds were disbursed. In June 1992, the licensee sold, at cost, its investment in Midwest to CACDC (Finding 1).

Med-A-Corp

On February 12, 1991, the licensee acquired 29,400 shares of Med-A-Corp common stock for \$408,750. In exchange for the stock, the licensee sold its investments in the following concerns to Med-A-Corp:

| <u>Portfolio Concern</u>     | <u>Investment</u>  |
|------------------------------|--------------------|
| McIntire Numismatic Auctions | \$300,000 (E)      |
| Southern Foods               | 4,900 (E)          |
|                              | <u>108,750 (P)</u> |
| Total                        | <u>\$413,650</u>   |

The licensee reported the acquisition of the stock to SBA as a financing with the purpose being "leasing, equipment, and equity." The licensee disbursed no funds for the Med-A-Corp common stock. In addition, the licensee incurred a \$4,900 loss on the sale, and as of the examination date the outstanding balance for the investment was \$408,750.

Incredible Closeout (Incredible)

The licensee received 4,666 shares of Incredible common stock on July 15, 1991. In exchange for the equity interest, the licensee sold its investments in the following concern:

| <u>Portfolio Concern</u>       | <u>Investment</u>  |
|--------------------------------|--------------------|
| Little Rock Clothier (2 loans) | \$189,510 (P)+(I)  |
|                                | <u>180,490 (E)</u> |
| Total                          | <u>\$370,000</u>   |

The Form 1031 submitted to SBA showed the purpose of the financing as "leasehold improvements, furniture, fixtures, inventory, and working capital." However, no funds were disbursed for the purpose shown. No loss or gain was incurred on the sale of the investments, and as of our examination date, the outstanding balance for the investment in Incredible was \$370,000.

In addition to misclassification of the above sales, the licensee misclassified as "Loans to Small Business Concerns - Loans" (Account 170) an assignment of three notes to the licensee by Compobello Realty, a portfolio concern. In October 1986, the licensee made a \$149,000 loan to Compobello. Compobello later experienced financial problems and, in January 1992, assigned the following three notes to the licensee in lieu of its regular loan payments:



| <u>Maker</u>     | <u>Amount of<br/>Note Assignment</u> | <u>Outstanding<br/>Balance 11/30/92</u> |
|------------------|--------------------------------------|---|
| R. & D. Lavender | \$ 32,783                            | \$15,536                                |
| M. Gilbertson    | 28,114                               | 28,926                                  |
| B. & J. Bruce    | <u>41,650</u>                        | <u>41,650</u>                           |
| Total            | <u>\$102,547</u>                     | <u>\$85,112</u>                         |

The licensee, properly, did not report these three notes to SBA as financings.

In summary, the licensee has \$1,251,564 of investments remaining on its books which were misclassified and should be recorded in account 220 "Notes and other securities received on sale of portfolio securities." In addition, the \$85,112 remaining on the Compobello notes should be recorded in account 221 "Other securities received," in accordance with the SBA Chart of Accounts.

The licensee's president explained the licensee's actions, in selling existing investments and reporting them as new financing, in a written statement:

Because of the poor economic conditions for this part of the country more and more SBCs who do business are required to place up assets or commercial surety in order to do business. The SBIC was able to provide this need along with working capital for SBCs by the use of other financings, thereby providing financings for more SBCs in furtherance of the Act.

The reason some of the financings were reduced from the original outstanding balance [i.e. sold at a price less than the licensee's cost basis] to the new financing was because the board had valued them at that amount the year before [i.e. the sales price was based on the board's last portfolio valuation].

#### Licensee's Comments

Mr. Hale said he did not realize the financings were misclassified, and the same procedures were followed in making these financings as other financings. He further stated that he should have explained on the Form 1031 that the financings were transfers of assets.

## Other Matters

The following observations are noteworthy items of information that are significant but have not been classified as findings.

### Donated Capital

On September 30, 1992, Central Arkansas Community Development Corporation (CACDC) contributed to the licensee Medical Accounts Receivable in the amount of \$11,523,782 and 470,737 shares of National Building Supply Stock which had a closing bid price of \$4.75 per share (\$2,236,000) as of September 30, 1992. The \$13,759,782 contribution of the assets was to be Paid-in-Capital Surplus to the licensee.

Shortly thereafter, on October 8, 1992, the licensee applied for \$6 million of preferred securities from SBA. By letter dated October 28, 1992, to the licensee, SBA denied the funding request because the licensee did not have the required regulatory capital. The donated capital, which was a non-cash contribution, could not be used for regulatory purposes. SBA also requested details on the donation from CACDC.

The licensee, in correspondence, provided SBA with information regarding CACDC and the nature of the Medical Accounts Receivable and the National Building Supply stock. The licensee argued that the donated assets should be allowed for leverage purposes. SBA, in a letter dated December 1, 1992, reiterated its position that the non-cash contribution cannot be used as regulatory capital, especially for leveraging purposes, until converted to cash.

The Medical Accounts Receivable were designated TMWB 006107726-1 and TMWB 00513527-122, dated September 18, 1992, from the Thompson Memorial Medical Center (located in California). The receivables consist of current accounts due from insurance companies, government payors, and/or patients for health care and related service.

We confirmed the receivables with the custodian, First Dominion Financial Group, Austin, Texas. First Dominion advised that the receivables were placed in the account in the name of Central Arkansas Community Development Corporation on September 29, 1992, but are now in the licensee's name and are free of any liens and encumbrances. The balance as of November 30, 1992 and January 29, 1993 was \$11,523,782.

The National Building Supply stock contribution to the licensee was discussed in Finding 1.

We discussed the donation of the assets with Mr. Thomas W. Anderson, the licensee's vice president and president of CACDC.

Mr. Anderson said he would not discuss CACDC's source of the assets donated to the licensee, saying only that there are companies who are willing to donate funds for economic development. Mr. Anderson further stated that the receivables are guaranteed to stay at the present balance.

As of our examination date, the Medical Accounts Receivable were shown on the licensee's financial records as Other Receivables-Medical (asset) and Donated Capital (paid-in capital). However, the 470,737 shares of the National Building Supply stock have not been recorded. As a result, the licensee's financial records do not show assets and paid-in-capital as reported to SBA.

The licensee's president said that because of the possible tax question resulting from the trade, and SBA forcing the licensee to sell the stock acquired in the exchange of its investments with CACDC (529,263 shares--see Finding 1), a loss might result on the sale of the stock. Therefore, the board felt that the proper action, to best protect the SBIC, was not to record the donated portion (470,737 shares) of the stock.

#### Portfolio Valuations

The licensee continues to retain on its books of account financings which appear uncollectible, and/or where the small concern is no longer in business or its existence cannot be determined. If these financings were entirely reserved or written off, the licensee would have losses equivalent to about 32 percent of approved private paid-in capital. The following is our analysis of each of these financings:

#### Communication Company

In February 1986, the licensee made a \$65,000 loan to the small concern. The loan balance, including accrued interest, as of our examination date was \$61,990. The loan has been delinquent for three years with the last payment being made in July 1989.

The concern has filed for bankruptcy and the licensee has partially depreciated the loan by \$12,189. Given the past history of the loan and the uncertain outcome of the bankruptcy, it would be more appropriate to fully depreciate the loan. Mr. Hale stated that the bankruptcy had just been filed at the time the loan was valued, and had not had the time to evaluate the situation. He further stated that the loan would be fully depreciated.

Monitor & Environmental Drilling (Monitor)

The licensee made a \$75,000 loan to the concern in August 1989. In January 1991, the licensee refinanced the loan for \$82,850 (included capitalized accrued interest and additional cash of \$2,850). No payments have been made on the loan, and, as of our examination date, the loan balance was \$82,850, plus accrued interest.

In 1993 the small concern went out of business and all assets were sold. The only security remaining on the loan was a personal guaranty from the principals. Although the licensee has depreciated the loan by \$16,570, given the past history of the loan, no current financial statements to substantiate the value of a personal guaranty, and no other assets, the loan should be fully depreciated until substantial recovery has occurred.

Mr. Hale stated that the depreciated value was based on what the licensee could collect on the guaranty and he knows that the principals have personal assets. He further stated that he was waiting for the next interest due date before taking action.

Med-A-Corp

On February 12, 1991, the licensee acquired 29,400 shares of Med-A-Corp common stock for \$408,750. In exchange for the stock, the licensee sold its investment in two concerns as discussed in Finding 2.

The licensee's files showed that the concern was located in El Paso, Texas. We obtained information from a credit report which showed the name was unknown to local authorities or directories, and the Texas Department of Revenue had no listing for the business. The concern supposedly develops medical software.

During the examination, we requested a telephone number for the concern in order to confirm the investment. Subsequent to our on-site examination date, the licensee's president provided a telephone number. However, when we called the telephone number, we learned it had been disconnected, and there was no listing in El Paso, Texas for Med-A-Corp.

Because we were unable to confirm the \$408,750 investment and other circumstances regarding the existence and viability of the concern, we believe the equity investment may be worthless. Given these facts, we believe it would be more appropriate to fully depreciate the investment until the licensee can establish the viability of the concern.

In summary, the licensee's potential portfolio losses would amount to 32 percent of the licensee's private paid-in capital, calculated as follows:

| <u>Concern</u>                           | <u>Outstanding Investment</u> |
|--|-------------------------------|
| Communication Company                    | \$ 61,990 (P) & (I)           |
| Monitor                                  | 86,276 (P) & (I)              |
| Med-A-Corp                               | <u>408,750 (E)</u>            |
| Total unrecorded potential losses        | \$ 557,016                    |
| Realized Earnings 11/30/92 (offset)      | <u>- 102,225</u>              |
| Total as of 11/30/92                     | <u>\$ (454,791)</u>           |
| Paid-in-Capital as of 11/30/92           | 1,406,310                     |
| Potential losses as percent of capital   | 32%                           |
| (P) & (I) Principal and Accrued Interest |                               |
| (E) Equity Investment                    |                               |

In addition to the above investments, we could not satisfactorily ascertain the viability of one concern, although we did speak to a person identifying himself as the principal (Autometrics, Inc.), and the loans to another concern may be overvalued (Castle Sewer/Southloop). These two investments are discussed below.

#### Autometrics, Inc.

As discussed previously in Finding 2, the licensee sold its investment in three portfolio concerns to Autometrics, Inc., for \$330,000. In exchange, the licensee received a \$150,000 note and acquired 490 shares of Autometrics' common stock for \$180,000. These were also the outstanding balances as of the examination date.

Autometrics, according to the background information in the financing file, was involved with the brokerage and restoration of exotic and collectable automobiles. The licensee's financing files showed that Autometrics was located in Nixa, Missouri. We obtained information from a credit report which showed the name was unknown to local authorities, and none of the local or state authorities had any record on the business. The licensee's files, however, did contain a financial statement dated July 1, 1992, showing net worth of \$852,271.

Because the financing file did not contain a telephone number for the concern, we requested the concern's telephone number from the licensee's president. Subsequent to our on-site visit of the licensee, the telephone number was provided, and we attempted to contact the concern. However, when we called the telephone number, we reached a recording which did not identify the business, person, or the telephone number. We left a message



informing the person of the nature of our call and a request to return our call. On February 18, 1992, Mr. Harry Howard, who represented himself to be the concern's principal, returned our call and verbally confirmed the investment.

Because we were unable to confirm the licensee's investment in the concern from outside sources, we have no assurance as to the concern's viability as an on-going concern, except for the discussion with Autometrics' principal.

Castle Sewer and Water Corporation (Castle)  
Southloop Construction Company (Southloop)

The licensee made a \$150,000 loan to Castle in February 1987, and a \$100,000 loan to Southloop in October 1987. Southloop is a wholly owned subsidiary of Castle. As of our examination date, the loan balances, including delinquent interest, were \$227,398 and \$155,870, respectively. The loans have been delinquent for about three years, no payments have been made since June 1990, and interest continues to accrue on the loans. The loans have not been depreciated.

The reason for not depreciating loans, according to the licensee's president, was the concern's strong collateral position. According to an August 1990 appraisal, the water and sewer system had a value of \$1,542,641. The licensee held a second lien mortgage position behind the first lien holder (Madison Savings and Loan Association, which failed). The first lien holder's loans are now held by the Resolution Trust Corporation (RTC).

The concern's 1991 tax return showed total "mortgages, notes, bonds payable in 1 year or more" of \$659,878. Based on the appraisal and the outstanding mortgages, there seems to be sufficient collateral, if assets were sold. However, the assets were not being sold and collateral alone should not be the determining factor for valuing loans which are three years delinquent.

Mr. Hale said he knows that he will be able to collect the loans because he knows the people and the concerns' operation. Also, no payments have been made because of the concerns' problems with the RTC due to the failure of the first lien holder, and payments will be made once the problems are resolved. He further stated that he did not want to depreciate the loans because of the tax consequences.

We believe that the licensee should consider the delinquency factor and depreciate the loans, by some amount, to reflect the collection problems. The licensee cannot be certain that it will be able to collect 100 percent of the loans.

EXHIBIT 1

CAPITAL MANAGEMENT SERVICES, INC.  
Unaudited Comparative Balance Sheet

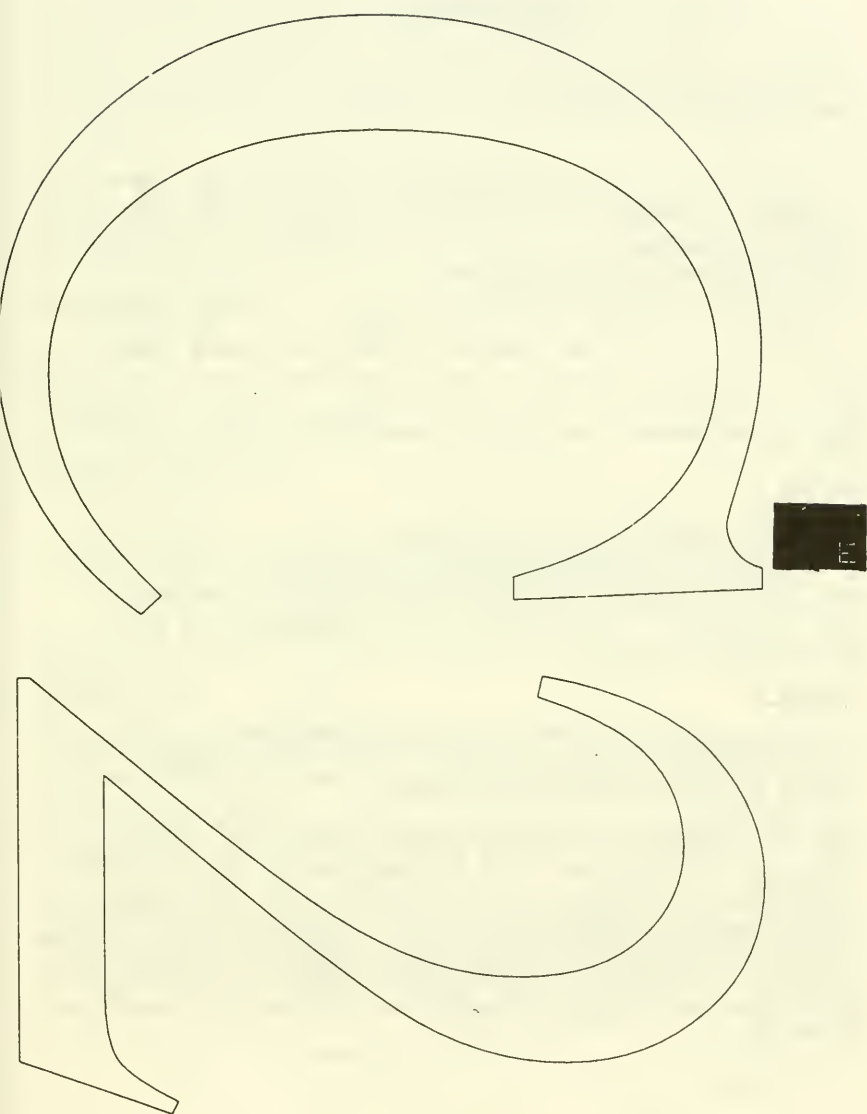
| <u>Assets</u>                                    | <u>As of Dates</u>  |                     |
|--|---------------------|---------------------|
|  | <u>11/30/92</u>     | <u>11/30/90</u>     |
| <u>Loans and Investments</u>                     |                     |                     |
| Loans .....                                      | \$ 1,048,113*       | \$ 2,842,297        |
| Debt securities .....                            |                     |                     |
| Equity interests .....                           | 1,191,740*          | 1,419,270           |
| Assets acquired in liquidation .....             |                     | 67,594              |
| Notes and other securities .....                 |                     |                     |
| Unrealized appreciation (net of depr.) .....     | (28,759)            | (160,156)           |
| <u>Total</u>                                     | <u>\$ 2,211,094</u> | <u>\$ 4,169,005</u> |
| Cash .....                                       | \$ 20,116           | \$ 8,582            |
| Invested idle funds .....                        | 31,090              | 202,403             |
| Receivables and accrued items .....              | 182,600             | 543,865             |
| Other Receivables .....                          | 14,037,781**        |                     |
| Other assets .....                               | 15,881              | 21,820              |
| <u>Total Assets</u>                              | <u>\$16,498,582</u> | <u>\$ 4,945,675</u> |
| <u>Liabilities and Capital</u>                   |                     |                     |
| <u>Liabilities</u>                               |                     |                     |
| Debentures payable to or guaranteed by SBA ..... | \$ 2,000,000        | \$ 2,000,000        |
| Accounts payable and accrued items .....         | 52,170              | 64,479              |
| Other liabilities .....                          | 42,854              | 550                 |
| <u>Total Liabilities</u>                         | <u>\$ 2,095,024</u> | <u>\$ 2,065,029</u> |
| <u>Capital</u>                                   |                     |                     |
| Capital stock and paid in surplus .....          | \$12,930,092        | \$ 1,406,310        |
| Preferred stock issued to SBA .....              | 1,400,000           | 1,400,000           |
| Unrealized gain (loss) on securities held .....  | (28,759)            | (160,156)           |
| Undistributed realized earnings .....            | 102,225             | 234,492             |
| <u>Total Capital</u>                             | <u>\$14,403,558</u> | <u>\$ 2,880,646</u> |
| <u>Total Liabilities and Capital</u>             | <u>\$16,498,582</u> | <u>\$ 4,945,675</u> |

- \* The licensee's accounts are misclassified, as discussed in Finding 2.  
 \*\* Account balance includes: (1) stock acquired in exchange for investments in small concerns, and (2) Medical Accounts Receivable donated to the licensee.

Prepared from trial balances provided by the licensee.

CAPITAL MANAGEMENT SERVICES, INC.SCHEDULE OF OFFICERS, DIRECTORS AND SHAREHOLDERSNOVEMBER 30, 1992

|   | <u>Common Stock</u><br><u>Shares</u> | <u>Percent</u> |
|---|--------------------------------------|----------------|
| David L. Hale, president and director   | 2,150                                | 76.8           |
| Thomas W. Anderson, vice president,<br>assistant secretary, chief financial<br>officer and director |                                      |                |
| James Hall III, treasurer and director  |                                      |                |
| George S. Ivory, Jr., secretary and director  |                                      |                |
| Linda Sue Hale, shareholder   | 325                                  | 11.6           |
| Hazel D. Dennis, shareholder  | <u>250</u>                           | <u>11.6</u>    |
| Total shares issued and outstanding   | <u>2,800</u>                         | <u>100.0</u>   |



SUITE 200 - 1910 NORTH GRANT  
LITTLE ROCK, ARKANSAS 72207  
501-664-8613

April 20, 1993

Mr. Joseph L. Newell  
Director  
Office of Investment  
U. S. Small Business Administration  
409 3rd Street, S.W. -8th Floor  
Washington, D.C. 20416

INVESTMENT DIVISION

APR 23 1 43 PM '93

Re: Response to your letter dated 3/26/93

Dear Mr. Newell:

This is the response, containing 33 pages, to your letter dated March 26, 1993.

Finding 1

As you requested and as we have previously agreed to reverse the transactions with the CACDC we have enclosed copies of the documents to reverse, also, facsimile transmitted on April 14, 1993. Upon your approval of the documents and the execution of same should meet the requirements of Finding 1. Also please find enclosed the resignation of Thomas Anderson as Vice-president and Board member of the Licensee.

Finding 2

The licensee vigorously denies any misrepresentation. This is absolutely absurd since previous audit made no such finding. The inconsistency where one audit approves and the next disapproves is causing irreparable harm to the licensee.

Your letter refers to these financings as "Sales" or "Trades". There is no document or evidence of a Sale or Trade in any of these financings. The documents are "LOAN AGREEMENTS AND STOCK PURCHASE AGREEMENTS" between "Lendor" and "Borrower". The definition of "Sale" or "Trade" as used by the Courts, Commercial and Governmental Laws throughout the United States are to constitute a "Sale" there must be parties standing to each other in relation of "Buyer" and "Seller". A "Sale" is a contract between two parties, called, respectively the "SELLER" and the "BUYER". "TRADE", is not a technical word and is ordinarily used in that of exchanging commodities by barter.

*A Federal Licensee under the Small Business Investment Act of 1958*



To be consistant in your interperatation that ONLY CASH may be used in ANY and ALL assistance to disadvantaged small concerns, for example it would require an SSBIC to place up ONLY CASH when guaranting a loan, ~~contract, bond or any other assistance~~. If this is your interperatation then it should be placed in writing and made a part of the rules and regulations where congress and other inter-ested parties may have the opportunity to comment on such interper-tation.

The meeting of February 19, 1993 I indicated to you that it was the board's position that these financings were in keeping with your policy that all SSBIC financings should be cash equivalent and that the board felt this would put the licensee in a better position towards those ends.

Communication Company - The board advised the auditor that full depreciation was it's intent. The board agrees.

Med-A-Corp - This financing has been satisfised in full.

Autometrics - See Attachments

Castle Sewer and Water Corp. -  
Southloop Construction - See attachments

Interest will no longer be accrued on these loans. we take your letter as a directive from SBA although this may create certain legal problems for the licensee in protecting its' position.

Arkansas is located in the Mississippi Delta Region designated by the United States Congress as one of the nations's most econcomically stressed areas.

The average Arkansas disadvantaged small concern has a gross annual income of less than \$50,000.00. Your new reprotng requirements will cost the typical, small disadvantaged business between \$3,250.00 and \$5,000.00 a year to comply. In Arkansas this means the typical disadvantaged concern must spend from 15% to 20% of its gross income on compliance. This eliminates most Arkansas disadvantaged concerns form participating in the program.

While complex and expensive reprotng requirements may be justified for large business concerns, they are totally inappropriate for the small disadvantaged business. The board feels that this is just another example of systematic discrimination that is keeping dis-advantaged concerns from receiving financial assistance.

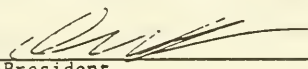
We have enclosed a graph that will illustrate SBA's record with minority firms over the past decade. There is no doubt that SBA financings shifted to larger, less racially diverse firms during this period.

In the past two years your reporting requirements for the SSBIC of the small concerns has increased the licensee's expenses from \$2,700.00 per year to maybe as high this year of \$30,000.00. The tacit message in this shift is to shift funding toward, larger, more successful concerns: In other words, abandon the SSBIC mission.

The SSBIC's charge under the ACT to financially assist Disadvantaged Small Concerns who may be deprived from participating in the Free Enterprise System is being selectively destroyed.

Capital-Management Services, Inc.

By

  
\_\_\_\_\_  
President

AGREEMENT OF REVERSAL  
April 13, 1993

On or about June 1, 1992, an assignment was enter into by and between Capital-Management Services Inc., an Arkansas Corporation hereinafter known as "Capital" and Central Arkansas Community Development Corporation, an Arkansas net for profit corporation hereinafter known as "CACDC" whereby CACDC would assign and transfer to Capital \$2,514,000.00 in publicly traded stock of at least NASDAQ quality in exchange for certain assets held by Capital as more specially set out in the Assignment attach hereto and marked "Exhibit A" and made a part hereof by reference .

That on September 30, 1992, CACDC did infact transfer to Capital 529,263 shares of National Building Supply Stock at \$4.75 a share. Both parties have held their respective assets intact as transferred.

It is the desire and agreement of Capital and CACDC that this transaction be reversed, Capital hereby transfers 5,293 shares of National Building Supply stock to CACDC and CACDC hereby assigns and transfers all assets as more specially shown in Exhibit A to Capital.

IN WITNESS WHEREOF, the parties hereto have executed and entered this Agreement the date first above written.

CENTRAL ARKANSAS COMMUNITY DEVELOPMENT CORPORATION

BY: \_\_\_\_\_  
President

CAPITAL-MANAGEMENT SERVICES, INC.

BY: \_\_\_\_\_  
Presidentn

AGREEMENT OF REVERSAL  
April 13, 1993

On or about September 30, 1992, a Contribution Agreement was entered into by and between Capital-Management Services Inc., an Arkansas Corporation hereinafter known as "Capital" and Central Arkansas Community Development Corporation, an Arkansas not for profit corporation hereinafter known as "CACDC" whereby CACDC would contribute to Capital 470,737 shares of National Building Supply stock and medical accounts receivable as designated as TMWB 006107726-1 and TMWB 00513527-122 dated September 18, 1992.

It was the hope and desire of the CACDC, with the approval of SBA, that Capital would be able to sell the assets for cash and use those funds for financial assistance to the disadvantaged small businesses within the Mississippi Delta Region.

It is the agreement of Capital and CACDC that this transaction be reversed. Capital hereby transfers 470,737 shares of National Building Supply stock and medical accounts receivable as designated as TMWB 006107726-1 and TMWB 00513527-122 dated September 18, 1992 to CACDC and CACDC hereby acknowledges and accepts said assets as is of September 30, 1992.

IN WITNESS WHEREOF, the parties hereto have executed and entered this Agreement the date first above written.

CENTRAL ARKANSAS COMMUNITY DEVELOPMENT CORPORATION

BY: \_\_\_\_\_

President

CAPITAL-MANAGEMENT SERVICES, INC.

BY: \_\_\_\_\_

President

THOMAS W. ANDERSON

8604 W.H. Burges  
El Paso, Texas 79925  
(915) 772-6606

March 29, 1993

David L. Hale, President  
Capital-Management Services, Inc.  
1910 North Grant  
Little Rock, Arkansas 72207

Dear David:

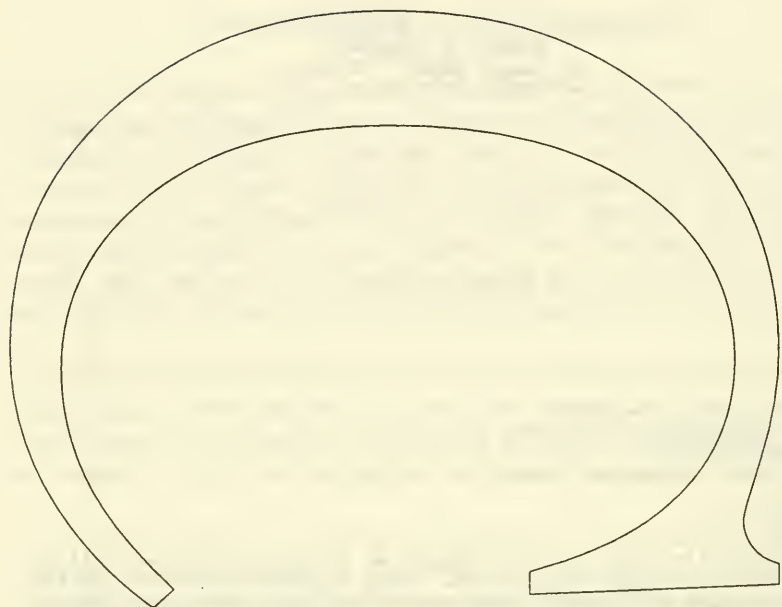
It is with regret that I submit my resignation as an officer and director of the corporation. This submission is due to the fact that most of my time is now spent out of the area and I do not feel I can not positively continue to commit to the organization. I have enjoyed my association with the organization and wish you much success.

Sincerely,

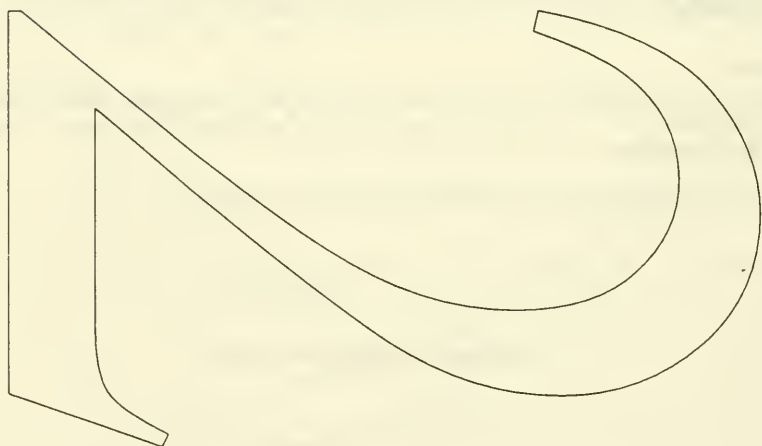
*Tom Anderson*

Thomas W. Anderson





F



CAPITAL MANAGEMENT SERVICES, INC.  
LITTLE ROCK, ARKANSAS  
License No. 06/06-5207

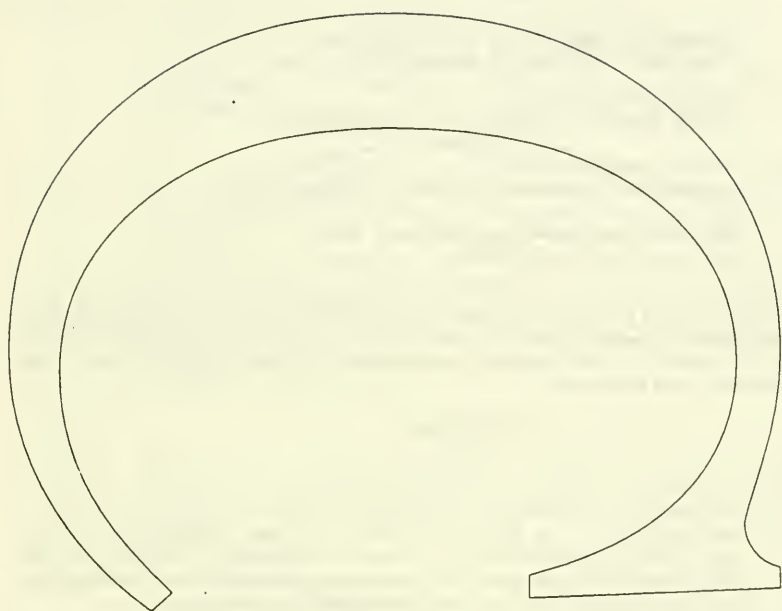
## SUMMARY:

- o Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.
- o Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.
- o We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

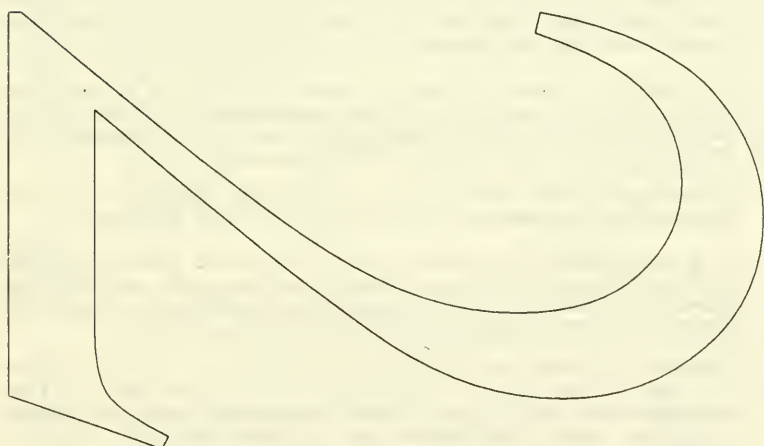
## BACKGROUND:

- o CMS is a Specialized SBIC that was licensed on 3/14/79 and it has \$1.4 million in private capital and \$3.4 million in SBA leverage.
- o In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:
  - It accepted a pool certificate backed by medical receivables valued at \$11.5 million and National Building Supply (NBS) stock valued at \$2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.
  - Licensee received NBS stock valued at \$2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.
- o In October 1992, Licensee applied for \$6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.
- o On December 8, 1992, Licensee:
  - Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.

- Was advised that an examination of the Licensee's operations would be needed before any leverage could be provided.
- Was advised that approval of disposition of assets to an associate would be conditioned on the Licensee converting the NBS stock into \$2.5 million of cash within 120 days.
- Was advised that the \$6 million leverage application was being returned.
- o On December 9, 1992, SBA agreed to accept a \$1.4 million leverage application based on the licensee's representation that:
  - the medical receivables were free and clear of liens and encumbrances and
  - the licensee would dispose of the NBS stock received in exchange for Licensee assets within 120 days.
- o On March 11, 1993, the Examination report on the Licensee was issued. Among other things, the examiner was not able to determine the source of the donated assets. The examiner reported that there was a reluctance on the part of the Licensee's management to disclose any information concerning the source of the donated assets.
- o On March 26, 1993, an examination letter was sent advising the Licensee of the results of the examination and stating that the leverage application would not be processed until the regulatory matters were resolved. The letter also provided the Licensee another opportunity to explain the source of the non-cash assets.
- o On April 23, 1993, SBA received the Licensee's response to the Examination letter. Answers to questions concerning donated assets were not provided. Instead, the Licensee stated that they would reverse the transactions and that no explanation should be necessary.
- o On May 5, 1993, the matter was referred to the Office of Inspector General for investigation with the expectation that the source of the contributed assets will be identified. Licensee was advised that they were not responsive to the examination letter and that the matter had been referred to the Inspector General.



G



## DATE:

TO: Joseph L. Newell  
Director, Office of Investment

THRU: Phyllis E. Dawson  
Chief Area II, Office of Investment

FROM: Walter Peterson  
Financial Analyst, Office of Investment

SUBJ: Capital Management Services, Inc.  
License No: 06/06-5207

This memorandum is to provide a chronology of events regarding the above SSBIC's application to SBA for preferred stock leverage and the subsequent referral of this matter by the Investment Division on May 5, 1993 to SBA's Inspector General (IG) for an investigative evaluation.

## CHRONOLOGY

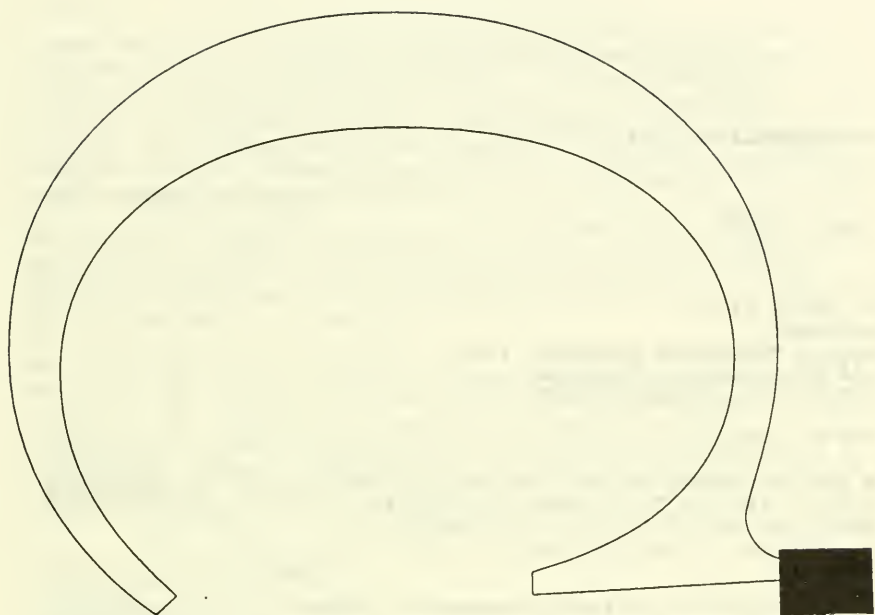
1993

- May 5 Following a review of this matter by SBA's Acting Administrator, a letter is sent to the licensee setting forth SBA's decision to refer the matter to SBA's IG for an investigative evaluation and a memorandum requesting such an evaluation is transmitted to the IG.
- April 23 The Office of Investment (OI) receives a letter from the Licensee responding to OI's examination letter dated March 26, 1993. Answers to questions concerning donated assets are not provided.
- April 19 SBA sends a letter to the Licensee stating it is willing to review and comment on the agreements of reversal in connection with our review of the Licensee's response to OI's examination letter of March 26, 1993.
- April 14 Licensee sends to OI a facsimile transmittal of unexecuted agreements of reversal for SBA approval.
- April 7 The Associate Administrator for Investment sends a letter to Ms. Kathy D. McCoy responding to her request to President Clinton for assistance concerning financing from an unidentified SBIC in Arkansas.
- April 1 Peterson telephones Ms. McCoy to inquire as to the status of her search for financing. In the course of the conversation certain statements are made which suggests that the assets donated to the Licensee are not free and clear of encumbrances as has been represented by the Licensee in its leverage application.

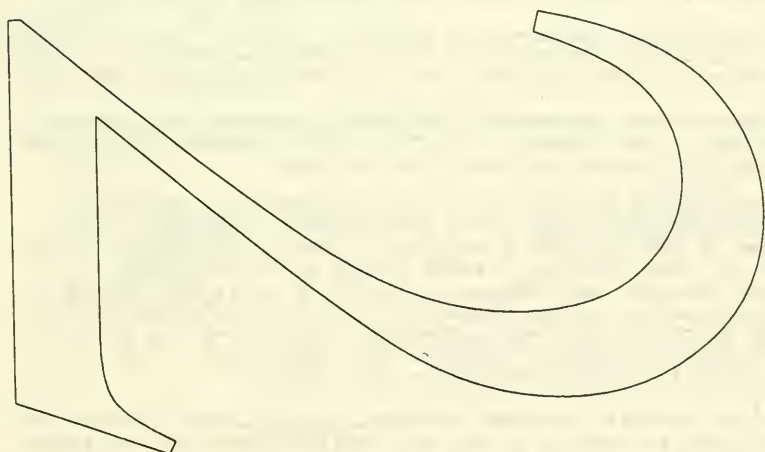


- March 26 OI sends to the Licensee an examination letter and a copy of SBA's Examination Report dated March 11, 1993 for the 24-month period ended November 30, 1992. OI's letter stated that the Licensee's March 9th plan was not acceptable and OI is withdrawing the Licensee's application for \$1.4 million of preferred stock leverage until the regulatory issues are resolved.
- March 11 The Acting Director of SBIC Examinations sends an Examination report on the Licensee to OI. The transmittal letter states that "We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACDC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity."
- March 9 A letter from the licensee to SBA dated March 9, 1993 indicated that the licensee intends to sell, with SBA approval, National Building Supply stock and medical accounts receivable over a period of six to eighteen months.
- Feb. 19 David Hale, president of CMS met with Wayne Foren, Ned Shepperson, Joseph Newell, Phyllis Dawson, and Walter Peterson of the Investment Division at SBA headquarters. The purpose of the meeting was to discuss the licensee's leverage application and the concerns which have been raised as a result of processing that application as well as those which have developed in the course of a recent SBA examination.
- Hale stated that he wanted to reverse the disposition of assets to an Associate (the NBS transaction) and donated capital transaction in an orderly fashion. Hale was told to send a letter to SBA for our approval of the licensee's plan to reverse the transactions.
- 1992
- Dec. 18 A confidential memorandum outlining certain transactions which should receive special attention was sent from OI to the examiner in the San Francisco District Office who would be responsible for the forthcoming examination of the Licensee.
- Dec. 9 The licensee submitted an application for \$1.4 million of preferred stock leverage.

- Dec. 9 OI sent a letter to the licensee agreeing to accept a fully executed leverage application package subject to the understandings that the medical accounts receivable transferred to the licensee from Central Arkansas Community Development Corporation ("CACDC") are free of liens and encumbrances and the licensee would dispose of certain assets received from an Associate for cash within 120 days.
- Dec. 9 Meeting at SBA with James Hall III, director of Capital Management Services. Present from SBA: Foren, Klapp, Dawson and Peterson. Capital Management's preferred stock application for \$1.4 million was discussed. Foren repeated that it is SBA policy not to leverage non-cash assets. A new examination is required because the last exam is two years old.
- Dec. 8 OI sent a letter to the licensee concerning \$13.8 million of assets donated to the Licensee stating the assets would not be recognized for regulatory capital purposes until converted to cash, and approval of the disposition of assets to an Associate was conditional on these assets being converted to cash within 120 days. OI again returned the \$6 million application for preferred stock leverage because of insufficient private capital.
- Dec. 1 OI sent a letter to the licensee again returning its preferred stock application because the licensee does not have the requisite amount of regulatory capital for \$6,000,000 of additional leverage.
- Oct. 28 OI returned the preferred stock application to the licensee because it did not have the requisite amount of regulatory capital for \$6,000,000 of additional leverage. The licensee was also asked to supply certain information concerning donated assets.
- Oct. 15 Licensee files an application of \$6.0 million of preferred stock leverage.



H



INV 6-1-1

BY FACSIMILE AND MAIL

MAY 5 1993

LICENSE NO. 06/06-5207

Mr. David Hale  
President  
Capital Management Services, Inc.  
1910 North Grant, Suite 200  
Little Rock, Arkansas 72207

Dear Mr. Hale:

We are in receipt of your letter dated April 20, 1993, responding to SBA's letters dated March 26, 1993 and April 19, 1993. In this regard, we have the following comments:

**Finding 1**

You submitted the following agreements between the licensee and Central Arkansas Community Development Corporation (CACDC) for SBA's approval in order to meet the requirements of Finding 1:

1. An unexecuted "Agreement of Reversal" between the Licensee and CACDC with respect to a "Contribution Agreement" executed by such parties on or about September 30, 1992.
2. An unexecuted "Agreement of Reversal" between the Licensee and CACDC with respect to an "Assignment Agreement" executed by such parties on or about June 1, 1992.

As we indicated in our letter to the Licensee dated April 19, 1993, SBA would review the above agreements in connection with our review of the Licensee's response to SBA's examination letter of March 26, 1993. However, we are unable to review these agreements, because the Licensee's letter of April 20, 1993 did not include answers to the questions raised in our examination letter of March 26, 1993 under Finding 1 concerning the 1,000,000 shares of National Building Supply, Inc. common stock and the donated medical accounts receivable (\$11,532,782).

Furthermore, despite repeated requests from SBA, the licensee has been unwilling to provide a full explanation regarding the issues raised in the Examination Report under Finding 1. Consequently, this matter has been referred to SBA's Inspector General for an investigative evaluation.

## Finding 2 .

Acceptance of the licensee's argument that the transactions referred to in the Examination Report should not be recorded as "Notes and other securities received on sale of portfolio securities" requires proof that "financial assistance" was provided to the small business concerns. SBA is willing to review evidence which demonstrates that the small business concerns have used the portfolio securities in question to promote their growth, expansion and modernization, as contemplated by the Act.

The licensee's letter of April 26, 1993 states, with respect to Med-A-Corp, that "This financing has been satisfied in full." Please provide SBA with copies of the documents showing terms, conditions and dates of such satisfaction including proof of bank deposits for any cash received.

Our examination letter request, that interest no longer be accrued on the Castle Sewer and Water/Southloop Construction loans, was not intended to create legal problems for the licensee. The request was intended to avoid full income recognition on a delinquent loan. The licensee is able to maintain an interest receivable on its books by following the instructions in Appendix II to Part 107 - Chart of Accounts for SBICs (see account Nos. 143 and 144).

Please direct any questions regarding these matters to Walter Peterson at 202-205-7594.

Sincerely,

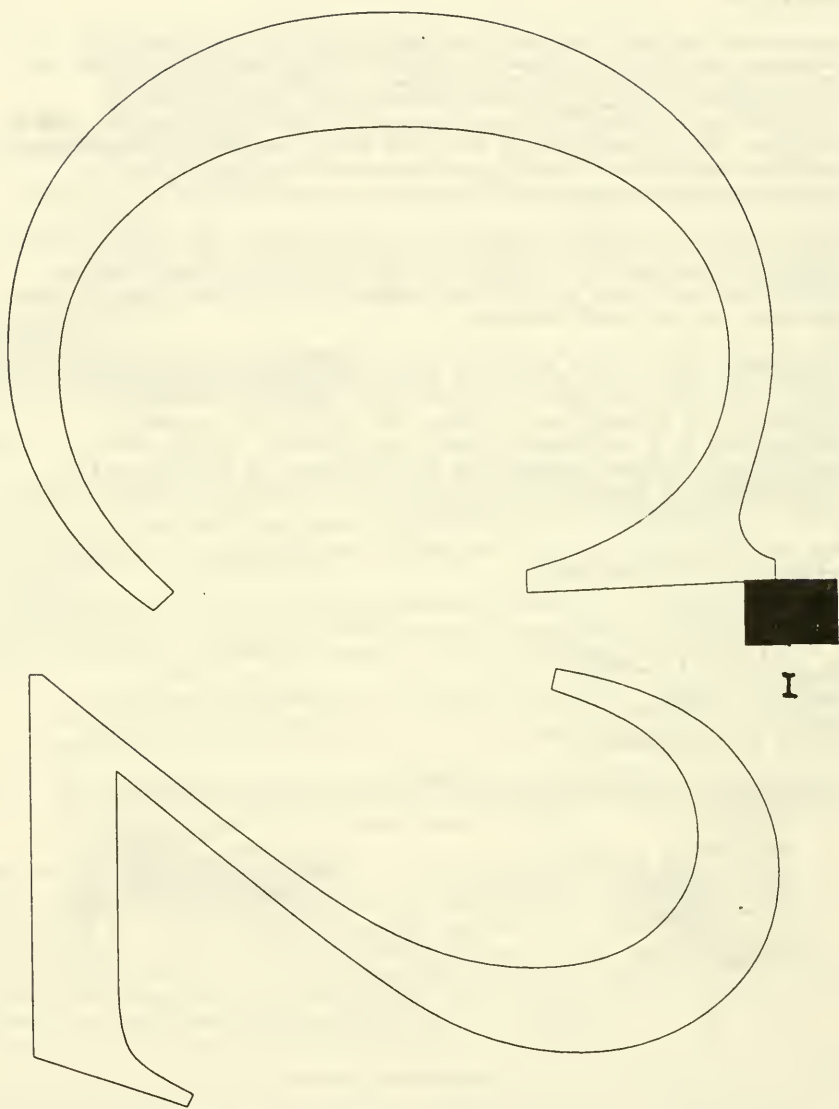
*Joseph L. Newell*  
Joseph L. Newell  
Director  
Office of Investment

OI: Peterson/5/3/93:final:mjg:5-3-93:revised:mjg:5-3-93

cc: Area II  
INV-6-7-1  
Peterson  
OIG - Mail Code 4112  
OE - Chestnut  
OE - Campbell  
Code D-19  
S:cmsaud7.wp

Peterson, *WJ 5/4/93*  
Dawson *5-3-93*  
*Cooper*





CAPITAL MANAGEMENT SERVICES, INC.  
1910 N. GRANT  
LITTLE ROCK, AR 72207

TELECOPIER TRANSMITTAL INFORMATION SHEET

DATE May 5, 1993

NUMBER OF PAGES(INCLUDING COVER) 2

TO: Mr. Joseph L. Newell

COMPANY: U. S. Small Business Administration

TELECOPIER # (202) 205-6959 VOICE # (202) 205-6510

FROM: David L. Hale, President

COMPANY: Capital-Management Services, Inc.

TELECOPIER # (501) 664-6302 VOICE # (501) 664-8613

MESSAGE: \_\_\_\_\_

THE INFORMATION CONTAINED IN THIS TELECOPY IS INTENDED ONLY FOR THE USE OF THE ADDRESSEE AND MAY CONTAIN INFORMATION THAT IS CONFIDENTIAL, PRIVILEGED, AND/OR OTHERWISE EXEMPT FROM DISCLOSURE UNDER APPLICABLE LAW. IF YOU ARE NOT THE INTENDED RECIPIENT YOU ARE NOT AUTHORIZED TO THIS TRANSMITTAL AND HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. THIS TRANSMISSION IS NOT INTENDED TO WAIVE ANY CONFIDENTIAL OR PRIVILEGED RELATIONSHIP. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE NOTIFY US IMMEDIATELY BY TELEPHONE AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS.

CAPITAL-MANAGEMENT SERVICES, INC.  
 SUITE 200 - 1810 NORTH GRANT  
 LITTLE ROCK, ARKANSAS 72207  
 501/684-4813

May 5, 1993

Mr. Joseph L. Newell  
 Director  
 Office of Investment  
 U.S. Small Business Administration  
 409 3rd Street, S.W. -8th Floor  
 Washington, D.C. 20416

Re: Your letter dated May 5, 1993

Dear Mr. Newell:

I am shocked at your letter under Finding 1. In our meeting of February 19, 1993 you specifically stated that the reversal of the transaction would satisfy SBA in full. In further conversations with you office it was explained that this was the intent of the SBIC, however, we wanted your office to approve the documents, as you requested, before the reversal was made. We mailed you copies of the proposed documents and on April 19, 1993 you indicated, both by letter and telephone that this was the right course of action and if we intended to keep or sell the assets for cash then the additional information would be needed.

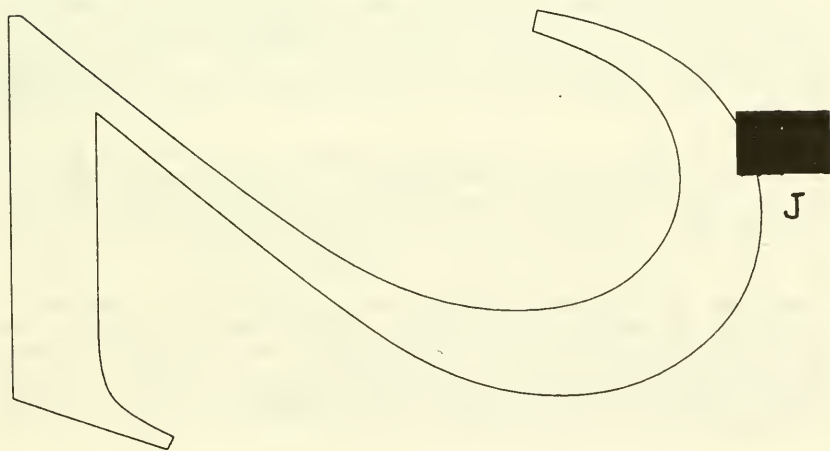
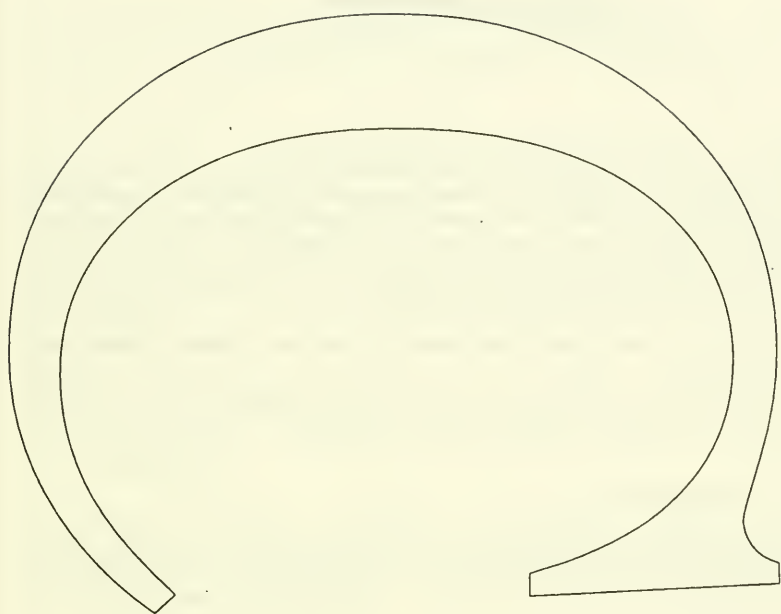
It was our total understanding that this reversal would satisfy Finding 1. If you wish the additional information as set out in your letter of March 26, 1993 we will provide you with the information as to the best of our abilities by May 12, 1993. Should certain information be unavailable to us then we will seek your guidance.

You state in your letter of May 5, 1993 that "despite repeated request from SBA, the licensee has been unwilling to provide a full explanation regarding the issues raised in the Examination Report under Finding 1". Please furnish to us, if possible by fax today, copies of written request or other documentation that repeated request has been made for any information since the issues were raised in your letter of March 26, 1993 concerning Finding 1. We are unable to locate or remember any such request. The only written communication from your office since the March 26, 1993 letter that we are able to locate is the letter dated April 19, 1993.

We want to provide you with any and all information that we have available and cooperate with you in every way and as I have explained to Mr. Walter Peterson we want you to approve our every step and that we have the full understanding between the SBIC and SBA. Our goal and intent to do everything that you want us to do. We apologize if there has been any misunderstanding, however, we want to emphasize that we thought that we were doing everything that you requested.

Capital-Management Services, Inc.

By [Signature] Federal Licensee under the Small Business Investment Act of 1958  
 President



PERSONAL & CONFIDENTIAL

May 13, 1993

Wayne,

I spoke with David Hale at 1:00 today regarding the tentative Arkansas trip to meet with the Governor, Arkansas Development Finance Authority (ADFA) and one other group that David couldn't remember plus any other group you feel should be at the discuss of the SBIC Program and the "Community Banking" concept. David would like to know when we expect to arriving so he can confirm the time with the Governor and other attendees.

There is only one contract carrier to and from Little Rock available June 3, 1993.

Washington/Dulles (7:10am) via St. Louis to Little Rock (10:31am)  
Depart Little Rock (6:00pm) via St. Louis to Wash/Dulles (11:02pm)

**For Your Information:**

After David and I finished our conversation regarding the Little Rock trip he told me of his recent SSBIC audit, conversations and correspondence with Walter Peterson, Marvin Klapp, Joseph Newell and you.

If I understood what David said, 'we have shut his SSBIC down'. It all started when Tom Anderson, Manager of his SSBIC approached a group from England who is involved in Factory Built Homes among other things. The group took \$15 million of their assets consisting of stock, medical receivables etc., from American companies and invested them into Tom Andersons CDC, "no strings attached".

Tom received a legal opinion from a Little Rock law firm stating that under SSBICs Rules and Regulations it would be acceptable for him to "donate" "surplus assets" to the SSBIC managed by Tom. Acting on that legal opinion, Tom took the \$15 million surplus from his CDC, made a gift or donation to the SSBIC with no strings attached, no exchange of stock, ownership, management or control.

David came to Washington, spoke to Marvin Klapp who agreed to accept the \$15 million as the SSBICs private capital providing the assets are sold and converted to cash prior to leverage, he argued but our decision was final. He consented to our decision and was in the process selling the assets when he meet with you and Joseph Newell who told him the assets are not acceptable and to reverse the entry.



During subsequent conversations with our office Walter Peterson told him not to sell the assets or reverse the entry. Then, our examiners did an audit, asked Tom Anderson questions that he felt could not be answer without the approval of the England group and everything is now at a stand still.

He said several letters have been written regarding the transaction and by him putting everything back the way it was is no longer acceptable to us until he answers all the questions regarding the 'donation'. He said he has provided us with all the information he has and simply wants to know what else we want him to do.

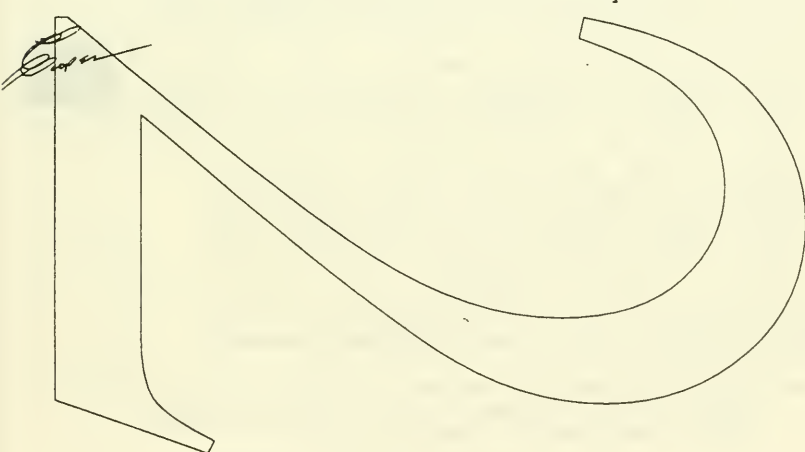
He recently sent us a letter and did not receive a reply. He called our office, Walter told him we were reviewing his letter and would get back to him. He wrote a second letter with no response, called for Joseph Newell and was transferred to Walter and received the same answer. According to David, no one has returned his calls.

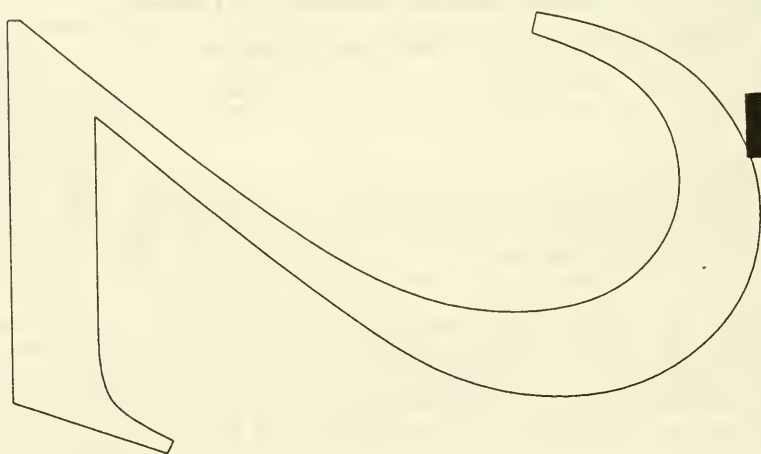
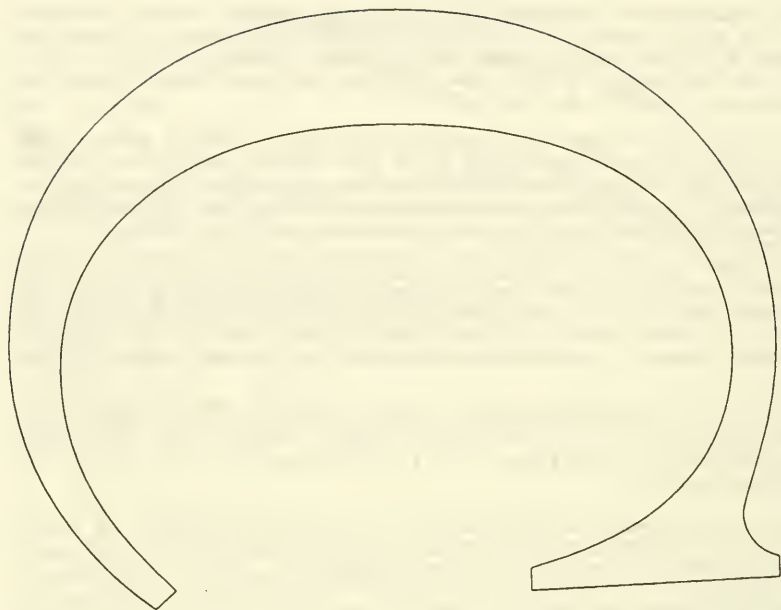
He told me that Joseph Newell and Walter Peterson both spoke with the 'England group', he gave us their names, address and everything he has and still we referred this to the Inspector Generals Office for investigation.

He has other investors interested in his SSBIC however, he can't enter into a contract with this investigation pending and he's unable to reverse the \$15 million transaction or sell the assets.

His major concern is taking a loss on the \$15 million during this holding period which he could be liable for an undetermined amount of money, not to mention the loss his SSBIC is facing.

David ask that I share this information with you.





K

CAPITAL MANAGEMENT SERVICES, INC.  
LITTLE ROCK, ARKANSAS  
License No. 06/06-5207  
May 19, 1993

## SUMMARY:

Non-cash assets were contributed to CMS as a capital contribution that were represented to be free and clear of liens and encumbrances. It is questionable as to whether this representation was correct. CMS attempted to obtain leverage from SBA based on this increase in capital.

Licensee transferred certain assets to an associate in exchange for stock which was represented to be non-restricted stock listed on NASDAQ. The stock is restricted and not listed on NASDAQ. The value of this stock is questionable.

We have attempted to obtain the source of the donated assets without success. Therefore, the matter has been referred to the Inspector General for investigation.

CMS did not make interest payments on two debentures. The Investment Division is scheduling a pre-liquidation meeting for May 21 at 10:00.

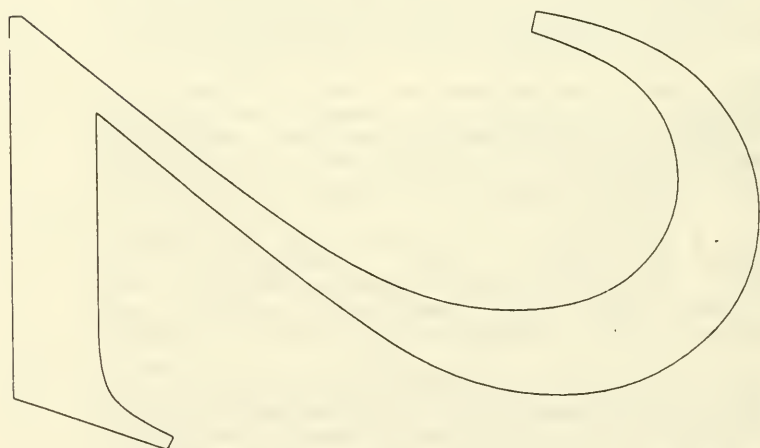
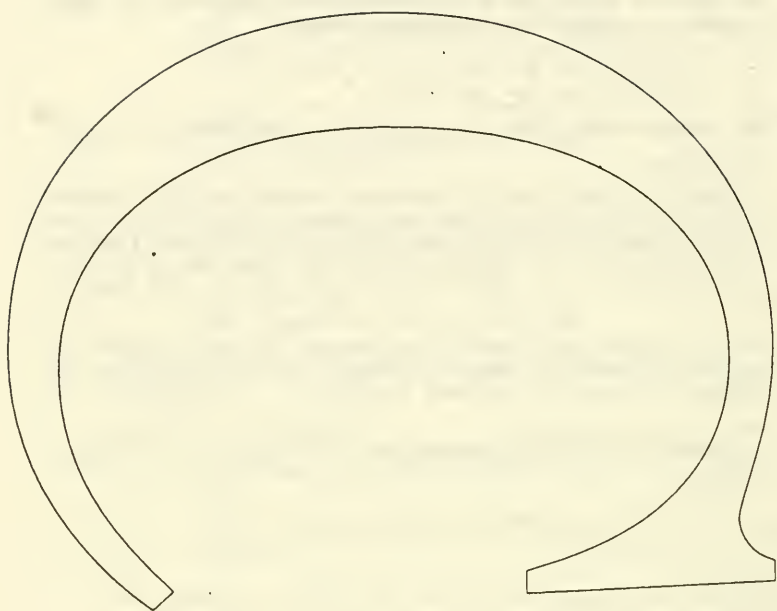
## BACKGROUND:

- o CMS is a Specialized SBIC that was licensed on 3/14/79 and it has \$1.4 million in private capital and \$3.4 million in SBA leverage.
- o In June 1992, Licensee initiated two non-cash transactions with an associate (Central Arkansas Community Development Corporation) which were not consummated until September 1992:
  - It accepted a pool certificate backed by medical receivables valued at \$11.5 million and National Building Supply (NBS) stock valued at \$2.3 million as a contribution of non-cash assets which was represented as an increase in private capital.
  - Licensee received NBS stock valued at \$2.5 million for certain assets held by the Licensee which were reported by the Licensee to be of comparable value.
- o In October 1992, Licensee applied for \$6 million of leverage in the form of preferred stock based on the capital increase consummated in September 1992.
- o On December 8, 1992, Licensee:

- Was reminded that, as a matter of policy, SBA does not leverage capital contributed in the form of non-cash assets until such assets are converted to cash.
- Was advised that an examination of the Licensee's operations would be needed before any leverage could be provided.
- Was advised that approval of disposition of assets to an associate would be conditioned on the Licensee converting the NBS stock into \$2.5 million of cash within 120 days.
- Was advised that the \$6 million leverage application was being returned.
- o On December 9, 1992, SBA agreed to accept a \$1.4 million leverage application based on the licensee's representation that:
  - the medical receivables were free and clear of liens and encumbrances and
  - the licensee would dispose of the NBS stock received in exchange for Licensee assets within 120 days.
- o On March 11, 1993, the Examination report on the licensee was issued. Among other things, the examiner was not able to determine the source of the donated assets. The examiner reported that there was a reluctance on the part of the Licensee's management to disclose any information concerning the source of the donated assets.
- o On March 26, 1993, an examination letter was sent advising the Licensee of the results of the examination and stating that the leverage application would not be processed until the regulatory matters were resolved. The letter also provided the Licensee another opportunity to explain the source of the non-cash assets.
- o On April 23, 1993, SBA received the Licensee's response to the Examination letter. Answers to questions concerning donated assets were not provided. Instead, the Licensee stated that they would reverse the transactions and that no explanation should be necessary.
- o On May 5, 1993, the matter was referred to the Office of Inspector General for investigation with the expectation that the source of the contributed assets will be identified. Licensee was advised that they were not responsive to the examination letter and that the matter had been referred to the Inspector General.

- o On May 7, 1993, ID was advised that CMS has not made interest payments on two debentures:
  - \$14,867 was due on March 3 and
  - \$35,952 was due on March 17.
- o By letter of May 10, 1993, CMS was given 7 days to make payment.
- o On May 18, 1993, David Hale was called by the Account Executive concerning the non-payment. Mr. Hale stated that a check was in the mail for the \$14,867 and that he would have to sell assets to come up with the \$35,952. He advised that the check would be in the mail on May 19, 1993.
- o ID confirmed that there was enough in the account to cover the \$14,867 check; however, there would not be enough to cover the second check.
- o Our normal procedure is to transfer a licensee to liquidation when payments are not made in a timely manner.





L

## PRIVILEGED AND CONFIDENTIAL

Date: June 14, 1993

To: Charles Mezger, Acting Director  
Office of Examinations

Phyllis Dawson, Chief Area II  
Office of Investment

From: Joseph L. Newell, Director *Joseph L. Newell*  
Office of Investment

Subject: Capital-Management Services, Inc.  
Little Rock, Arkansas  
License No. 06/06-5207

At about 4:00 P.M., I returned a call from:

Special Agent David Reign  
Federal Bureau of Investigation  
10825 Financial Centre Parkway  
#2 Financial Center, Suite 200  
Little Rock, Arkansas 72211.

His telephone number is (501) 221-9100. He advised that he had been referred to me by SBA's Office of the Inspector General.

He also advised that he was working with the U.S. Attorney's Office, and he requested the following information:

1. Copies of the SBA examiner's workpapers for the examination of the Licensee for the period ended November 30, 1992. He expressed an interest in "Findings" Numbers 1 and 2, but a greater interest in "Other Matters".
2. A copy of the prior examination report.
3. A copy of the Licensee's Preferred Stock Leverage Application filed October 8, 1992 and all related correspondence.
4. A copy of the Licensee's Annual Report, SBA Form 468, including the IPA Report, for the FYES ~~6-30-91~~ and 6-30-92.

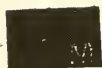
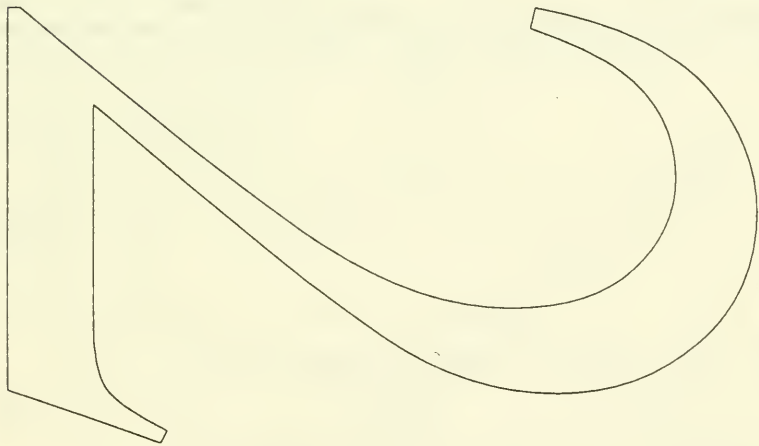
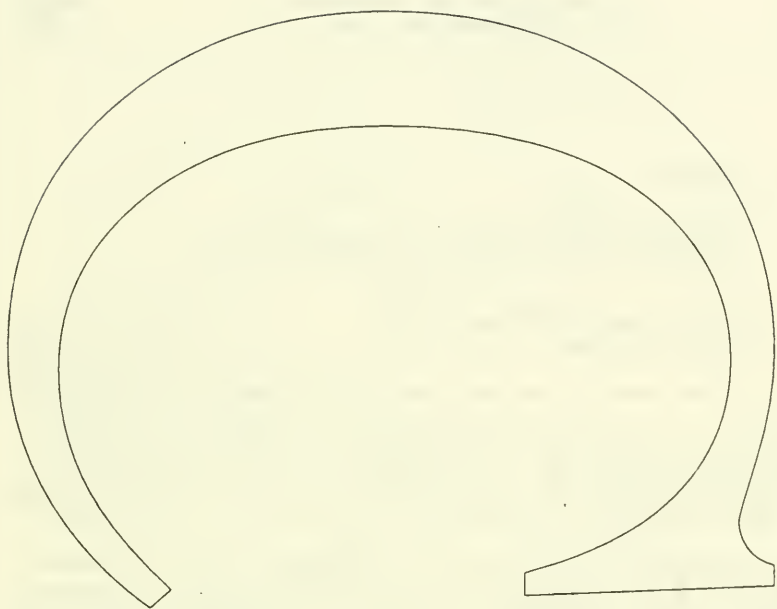
5. Copies of SBA Forms 1031 filed by the Licensee for the following SBCs:
- Autometrics
  - Arkansas Commercial Realty
  - Property Care, Inc.
  - Cole Masonry & Construction, Inc.
  - Midwest Consulting
  - Med-A-Corp
  - Incredible Closeout
6. Telephone numbers for Autometrics and Med-A-Corp which he said was known to the SBA examiner.
7. Copies of third-party correspondence (if any) seeking information from SBA about National Building Supply, Inc., and First Dominion Financial Group.
8. Copies of any prior referrals to the OIG re: Capital-Management Services, Inc. over the last five (5) years.

S/A Reign stated that the FBI inquiry, at this time, is limited to information available from other than "public" sources e.g. their files and SBA files but not SEC files.

Items numbers 1, 2 and 6 should be provided by the Office of Examinations directly to Special Agent David Reign. The balance of this request will be handled by the Office of Investment.

THIS INQUIRY SHOULD BE TREATED AS CONFIDENTIAL.

cc: Foren ✓  
Shepperson



M



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



DATE: August 4, 1993

TO: Janice E. Wolfe  
Acting Associate Deputy Administrator  
for Finance, Investment and Procurement

FROM: Charles E. Shepperson *Red*  
Deputy Associate Administrator  
for Investment

SUBJECT: Fraud Against the SBA--Capital Management Services, Inc.

On August 3, we received the attached letter from the United States Attorney, Eastern District of Arkansas concerning the investigation of Capital Management, Inc. We referred this case to the Inspector General for investigation. The Inspector General referred the case to the Federal Bureau of Investigation due to lack of resources.

The U.S. Attorney's letter describes instances where the licensee, David Male, has submitted false and fraudulent statements etc. I have also attached Joe Newell's analysis of the U.S. Attorney's letter.

I mentioned this case to Marty Teckler today and we will get together with his staff later today to discuss the proper course of action.



United States Attorney  
Eastern District of Arkansas

Post Office Box 1229  
Little Rock, Arkansas 72203

July 29, 1993

Mr. Roger Peterson  
Small Bus. Administration  
409 3rd Street, S.W.  
Investment Division, 6th Floor  
Washington, D.C., 20416

Re: Capital-Management Services, Inc.  
06-06-5207

Dear Mr. Peterson:

The transactions I told you about runs like this.

A stock broker in Little Rock, Arkansas, had control of an account of some people from Louisiana, which had over a million in cash in it. On November 4, 1988, he transferred from the account \$800,000.00, to Capital-Management Services, Inc., \$400,000.00, went into a savings account, and \$400,000.00, in the form of cashier checks "paid" off two delinquent loans Capital-Management Services, Inc., had on its' books and made a payment on a third. Effect - debit \$800,000.00 cash, credit loans and accrued interest \$400,000.00 and credit capital \$400,000.00. On the basis of new capital, now documented by the Savings account and the issuance of new stock, David Hale applied for \$900,000.00 in SBA leverage.

Over the course of the next week, David Hale created three new "loan/equity positions" in three "companies" and funded them in a total of \$800,000.00. The "borrowers" then cut checks totaling \$800,000.00 to return the money to the brokerage account. See attached chart.

I view this as \$400,000.00 bogus private capital and three bogus "loan/equities". What is SBA's view?

I think something similar occurred in March, 1986, on a \$1,500,000.00 leverage on the basis of \$502,000.00 in new "capital". I need all the documents that can be located on the 1986 leverage.

Also, in early 1988, David Hale applied for leverage and was turned down. Please send what can be found about this.

Page 2  
July 29, 1993

Also, I would like the material on the 1983 leverage.

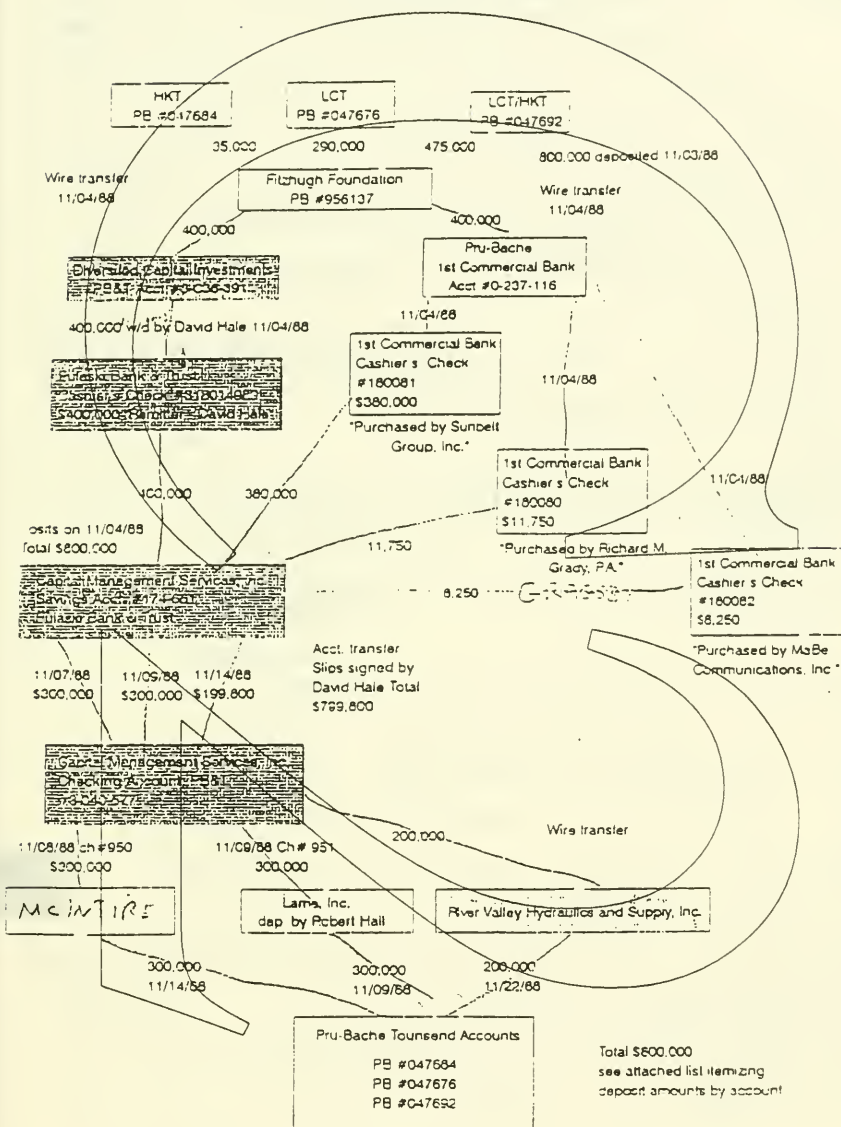
Yours truly,

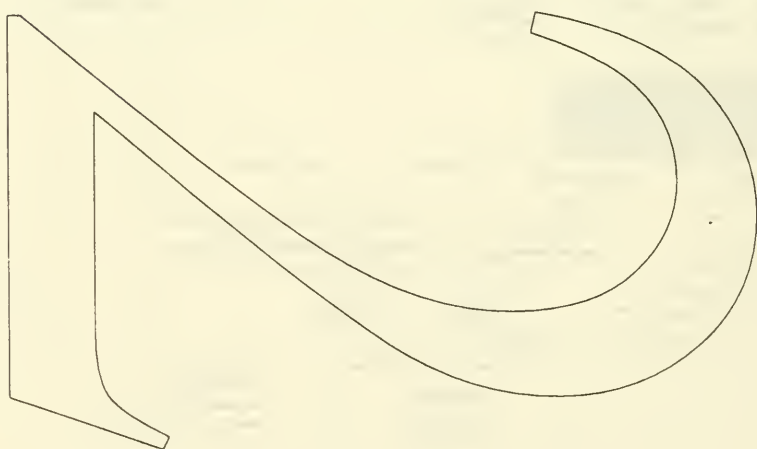
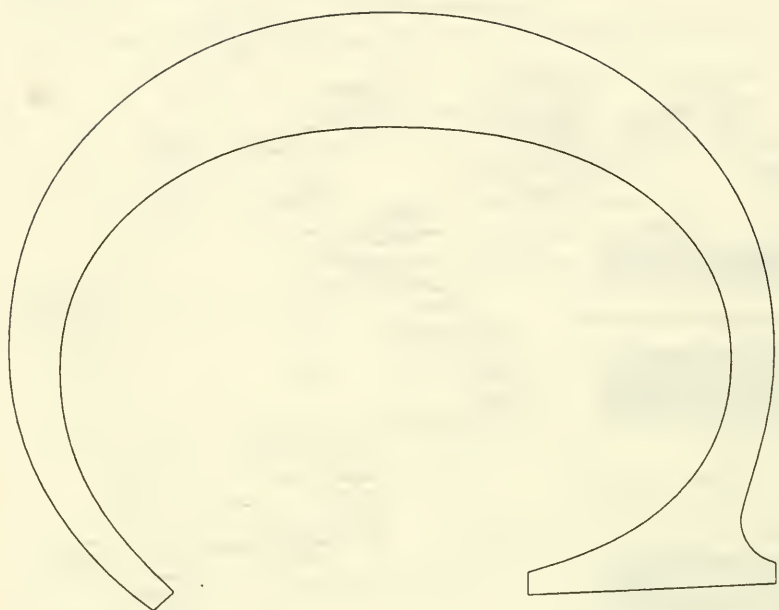
RICHARD M. PENCE, JR.  
United States Attorney

FLETCHER JACKSON  
Assistant U.S. Attorney

FJ/skg  
Encls.

## Transaction One





Z



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



DATE:

TO: See Distribution Below

FROM: Associate Administrator  
for Investment

SUBJECT: Liquidation Conference  
Capital Management Services, Inc.  
License No. 06/06-5207

Attached is a conference memorandum on the subject SBIC.

In accordance with the applicable procedures, a meeting will be held in my office at 2:00 P.M. on August 16, 1993 to decide on action to be taken by SBA as a regulator and creditor.

We would appreciate it if you or your designee would be in attendance.

Distribution:

Ronald Cibolski - Office of Liquidation

Marty Teckler - Office of General Counsel

Mark Stephens - Office of General Counsel

Wayne S. Foren - Investment Division

Ned Shepperson - Investment Division

Wayne S. Foren

Attachment



PRIVILEGED AND CONFIDENTIAL

## PROFILE

August 4, 1993

1. Licensee:

Capital Management Services, Inc.  
 1910 North Grant, Suite 200  
 Little Rock, Arkansas 72207  
 License No. 06/06-5207  
 Telephone No. (501) 664-8613

2. Organization and Management:

(a) Licensed: March 14, 1979

(b) Officers, Directors and Owners:

| <u>NAME</u>   | <u>TITLE</u>           | <u>% of Ownership</u> |
|---|------------------------|-----------------------|
| David L. Hale<br>2823 N. Pierce<br>Little Rock, AR  | President/<br>Director | 82%                   |
| Linda Sue Hale<br>2823 N. Pierce<br>Little Rock, AR |                        | 9%                    |

Hazel Dennis  
 10455 Julie Beth  
 Cypress, CA

James Hall  
 5712 Cadron Creek  
 North Little Rock, AR

Secretary/  
 Director

George S. Ivory  
 8815 Beck  
 Little Rock, AR 72204

Vice President

3. Financial Condition (unaudited as of Sept. 30, 1992)ASSETS

|                        |             |
|------------------------|-------------|
| Loans & Invest (cost)  | \$2,214,402 |
| Unrealized Deprec.     | 0           |
| Unrealized Apprec.     | 0           |
| Loans & Invest (value) | 2,214,402   |
| Cash & Idle Funds      | 51,819      |
| Other Assets           | 16,487,740  |
| <b>Total Assets</b>    |             |

\$18,753,961

LIABILITIES

|                     |               |
|---------------------|---------------|
| SBA Guaranteed Debt | \$2,000,000   |
| Other Liabilities   | <u>70,293</u> |
| Total Liabilities   | \$2,070,293   |

CAPITAL

|                           |                |
|---------------------------|----------------|
| Private Capital           | \$15,166,092   |
| SBA Preferred Stock       | \$ 1,400,000   |
| Unrealized Gain (Loss)    | (28,759)       |
| Non-Cash Gain/Income      | 0              |
| Undis. Real. Earn. (Loss) | <u>146,335</u> |
| Total                     | \$16,683,668   |

|                               |              |
|-------------------------------|--------------|
| Total Liabilities and Capital | \$18,753,961 |
|-------------------------------|--------------|

4. Outstanding SBA Debt:

| <u>Principal Balance</u> | <u>Loan Number</u> | <u>Dist. Date</u> | <u>Mat. Date</u> | <u>Int. Rate</u> |
|--------------------------|--------------------|-------------------|------------------|------------------|
| \$ 500,000               | 01344600-04        | 12/09/83          | 11/30/93         | 11.50%           |
| \$1,000,000              | 01436600-07        | 09/10/86          | 09/08/96         | 7.25%            |
| \$ 500,000               | 01455000-09        | 03/22/89          | 03/17/99         | 9.00%            |
| <u>Preferred Stock:</u>  |                    |                   |                  |                  |
| \$1,500,000              | 05010500-02        | 09/30/89          |                  | 3.000%           |

5. Violations:Violation of Section 107.906 (b) False Statement.

The Licensee is in violation of Section 107.906 (b). There are eleven instances of false statements cited in items 1 through 7 of the attached memorandum (RE: FRAUD AGAINST SBA).

6. Chronology of SBA's request for corrective action:

Since the licensee cannot rescind a false statement there is no request for corrective action.

7. Financial Condition:

In our opinion, the reported financial position of licensee as of 9/30/92 does not give a true picture of the underlying condition of the licensee. If the licensee's statement of financial position is adjusted to remove the donated capital and the shares of National Building Supply (NBS), which is insolvent, are written down to zero, the licensee's capital impairment is 171%, as shown on the adjusted Statement of Financial position. In addition, there are good reasons to believe that the Licensee's Portfolio Securities are materially overvalued.

## Statement of Financial Position

|                            | <u>9/30/92</u> | <u>Adjustment</u>  | <u>Adjusted<br/>9/30/92</u> |
|----------------------------|----------------|--------------------|-----------------------------|
| Portfolio Securities Cost  | \$2,214,402    |                    | \$2,214,402                 |
| Less Current Maturities    | <u>570,617</u> |                    | <u>570,617</u>              |
|                            | 1,643,785      |                    | 1,643,785                   |
| <u>Current Assets</u>      |                |                    |                             |
| Cash                       | 51,819         |                    | 51,819                      |
| Interest and divds. rec.   | 197,149        |                    | 197,149                     |
| Current portfolio mat.     | 570,617        |                    | 570,617                     |
| Other current assets (NBS) | 2,513,999      | (2,513,999)        | 0                           |
| <u>Other Assets</u>        |                |                    |                             |
| Furniture and equip.       | 2,799          |                    | 2,799                       |
| Other (donated assets)     | 13,773,793     | (13,759,782)       | 14,011                      |
| Total Assets               | 18,753,961     | (16,273,781)       | 2,480,180                   |
| Long Term Debt SBA         | 2,000,000      |                    | 2,000,000                   |
| Current & other Liab.      | 70,293         |                    | 70,293                      |
| <u>Capital</u>             |                |                    |                             |
| Paid in Capital & Surplus  | 15,166,092     | (13,759,782)       | 1,406,310                   |
| 3% Preferred Stock         | 1,400,000      |                    | 1,400,000                   |
| Unrealized gain (loss)     | (28,759)       |                    | (28,759)                    |
| Undist. Realized Earnings  | <u>146,335</u> | <u>(2,513,999)</u> | <u>(2,367,664)</u>          |
| Total Capital              | 16,683,668     | (16,273,781)       | 409,887                     |
| Total Liab. and Capital    | 18,753,961     | (16,273,781)       | 2,480,180                   |
| Capital Impairment         | 0.2%           |                    | 171.1%                      |

8. SBA Audit:

An Examination Report dated March 11, 1993 for the 24 - month period ended November 30, 1992 contained the following findings:

Finding 1 - Assets transferred to an Associate  
Overline investment  
Assets not properly safeguarded

Finding 2 - Sale of assets misclassified  
Misrepresentation to SBA

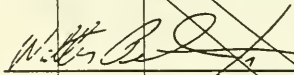
The Office of SBIC Examinations made the following statement in its transmittal letter:

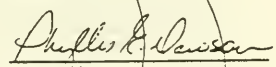
"We believe the donation and exchange of assets raises serious questions, such as potential conflict of interest transactions, which we could not pursue because of Mr. Anderson's refusal to answer our questions regarding CACOC's source of the stock and accounts receivable. Without additional information, we believe the potential for undisclosed material facts exists in the transactions, including the potential for illegal activity."

In a March 26, 1993 examination letter to the licensee, the Office of Investment sought answers to questions concerning the source of the stock and accounts receivable. Since OI did not receive answers to these questions, it referred the matter to the IG on May 5, 1993 for an investigative evaluation. IG referred the matter to the FBI.

9. Recommendation:

It is recommended that the Licensee be transferred to the Office of Liquidation to commence appropriate legal and/or administrative action to protect the interest of SBA.

  
Walter Peterson  
Financial Analyst, Area II  
Office of Investment

  
Phyllis E. Dawson  
Chief, Area II  
Office of Investment



INVESTMENT DIVISION  
SUITE 6600  
U. S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

# MEMORANDUM

TO: SBIC Files INV 6-7-1

FROM: Joseph L. Newell, Director  
Office of Investment

RE: FRAUD AGAINST SBA  
Capital-Management Services, Inc.  
License No. 06/06-5207

DATE: August 3, 1993

*Joseph L. Newell*

Based upon information provided by the U.S. Department of Justice, United States Attorney, Eastern District of Arkansas, in a letter dated July 29, 1993 (copy attached), it is apparent that Capital Management Services, Inc. (the Licensee), has defrauded SBA of \$900,000 of leverage funds.

A review of the SBA files of the Licensee, in light of the information provided by the DOJ, disclosed the following:

1. False and fraudulent "Amendment to License Application" dated 11/04/88, signed by David L. Hale, filed under cover of letter dated 11/07/88 (signed by David L. Hale), falsely certifying to a bogus \$400,000 increase in the Licensee's private capital.
2. False and fraudulent letter dated 11/18/88, signed by David L. Hale, falsely reporting the source of the \$400,000 to be the proceeds (total \$864,000) from his wife's sale of a small commercial center.
3. False and fraudulent letter dated 11/12/88, signed by David L. Hale, falsely reporting the repayment in full of the Sunbelt Group, Inc. loan (\$380,000).
4. False and fraudulent "Application for Funds" (\$400,000 P/S and \$500,000 debentures) dated 11/04/88, signed by David L. Hale and filed under cover of letter dated 11/16/88, signed by David L. Hale.
5. False and fraudulent letter dated February 6, 1989, signed by David L. Hale, reporting receipt of an \$8,250.00 payment in November 1988 on the Mabe Communication, Inc., loan and payment in full of the Sunbelt Group, Inc. loan.



6. False and fraudulent filing of Portfolio Financing Reports, SBA Form 1031 as follows:
- A. Plant and working capital loan to Lame, Inc., in the amount of \$300,000, signed by David L. Hale and dated 11/09/88.
  - B. Equity in coins, expand operations and working capital loan in the amount of ~~\$300,000~~ to McIntire Numismatic Auctions, Inc. (McIntire) signed by David L. Hale and dated 11/07/88.
  - C. Inventory, equipment and operating capital loan to River Valley Hydraulics and Supply, Inc. (River Valley) loan in the amount of \$200,000 signed by David L. Hale and dated 11/11/88.
7. Ongoing and continuous false and fraudulent filings with SBA as follows:
- A. Annual Report, SBA Form 468, for the FYE 06/30/89 reports loans to Lame, Inc., McIntire and River Valley.
  - B. Annual Report, SBA Form 468, for the FYE 06/30/90 reports loans to Lame, Inc., McIntire and River Valley.
  - C. Annual Report, SBA Form 468, for the FYE 06/30/91 reports all loans reduced to -0- balances.
8. To maintain a cover-up of the bogus ~~financings~~ to Lame, Inc., McIntire, and River Valley, these securities have been exchanged for other securities issued by "questionable" entities at "questionable" values as discussed below:
- A. On 04/15/91, the outstanding financings of Retail Liquidators, Inc. (\$389,776), River Valley (\$248,413), Lame, Inc. (\$300,000) and Arkansas Commercial Realty (\$58,425) were exchanged for equity shares of:
 

|                              |                    |
|------------------------------|--------------------|
| Converging Systems, Inc.     | \$ 400,000         |
| Cyberspace Corp.             | 350,000            |
| Patient Communications, Inc. | 250,000            |
|                              | <u>\$1,000,000</u> |
  - B. On 02/12/91, the outstanding financings of McIntire (\$300,000), and Southern Foods (\$113,650) were exchanged for an equity investment in Med-A-Corp, Inc..
  - C. On 06/01/92, the equity positions in Converging Systems, Inc. (\$400,000); Cyberspace Corp. (\$350,000); Patient Communications, Inc. (\$250,000) along with 4 other financings were exchanged for stock of National Building Supply, Inc. with a reported value of \$2,514,000 as reported on the most recent financial statements filed with SBA.

SBA has questioned the value of the National Building

Supply, Inc. stock as well as the circumstances under which it came into possession of the Licensee.

- D. On 03/15/93, the ~~equity investment~~ in Med-A-Corp (\$420,000) was exchanged for an equity investment in FSA Financial Services, Inc. (FSA) (\$420,000).

SBA has questioned the existence of FSA and the values assigned to the exchange transaction. (See SBA letter August 2, 1993).



INVESTMENT DIVISION  
SUITE 6600  
U. S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, DC 20416

# MEMORANDUM

TO: SBIC Files INV 6-7-1

FROM: Joseph L. Newell, Director  
Office of Investment

RE: FRAUD AGAINST SBA  
Capital-Management Services, Inc.  
License No. 06/06-5207

DATE: August 3, 1993

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| Patient Communications, Inc. | 250,000            |
|                              | <u>\$1,000,000</u> |
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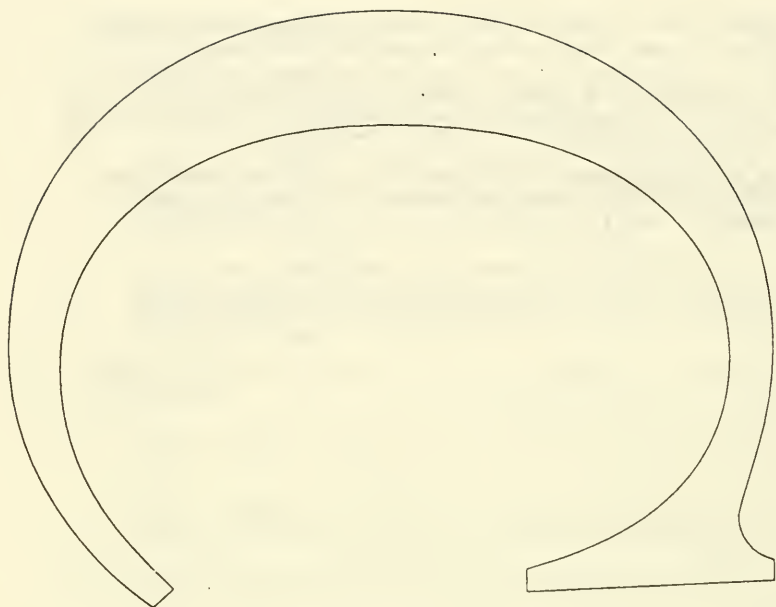
SBA has questioned the value of the National Building

Supply, Inc. stock as well as the circumstances under which it came into possession of the Licensee.

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SBA has questioned the existence of FSA and the values assigned to the exchange transaction. (See SBA letter August 2, 1993).







U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



## MEMORANDUM

PRIVILEGED AND CONFIDENTIAL

DATE: August 9, 1993

TO: Erskine B. Bowles  
Administrator

FROM: Wayne S. Foren *Monte D. Tuller*  
Associate Administrator for Investment

SUBJ: Capital-Management Services, Inc.  
Little Rock, Arkansas  
License No. 06/06-5207

This is to inform you that there have been significant new developments concerning the above-referenced Specialized Small Business Investment Company (SSBIC) that may lead to a criminal indictment of the manager of the SSBIC, Mr. David Hale.

On August 3, 1993, the Office of Investment received a letter from the United States Attorney, Eastern District of Arkansas, concerning the Licensee's 1988 application for \$900,000 in SBA leverage. In connection with the application, the Licensee is alleged to have engaged in a series of bogus transactions that caused SBA to believe that the Licensee had increased its private capital by \$400,000 and that problem investments had been repaid. On the basis of the Licensee's false statements, SBA approved funding in the amount of \$900,000.

We understand that the U.S. Attorney met with Mr. Hale and his attorney on August 6, 1993 and presented him with a draft indictment alleging that Mr. Hale and two other individuals defrauded the United States (SBA) in 1988. SBA was sent a copy of the draft indictment. SBA personnel from the Investment Division and the Office of General Counsel will meet with the FBI and the U.S. Attorney in Little Rock on August 10, 1993 to discuss the evidence against Mr. Hale and the SSBIC with a view towards placing the SSBIC into receivership. *WLS  
FBI  
meeting  
8/10/93*

We have also been informed by the Assistant U.S. Attorney that the licensee made false statements in a 1992 application for SBA leverage in the amount of \$6.0 million. The 1992 request for funds was not approved. Finally, the FBI and the U.S. Attorney are investigating the Licensee's 1986 and 1983 leverage applications to determine if fraud was involved.

IN THE UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF ARKANSAS  
WESTERN DIVISION

UNITED STATES OF AMERICA )

VS. )

DAVID L. HALE; )

CHARLES MATTHEWS; AND )

EUGENE FITZHUGH; )

LR-CR-93-

) 18 U.S.C. §371

) 18 U.S.C. §3013

) 18 U.S.C. §3571

INDICTMENT

THE GRAND JURY CHARGES:

COUNT I

That from on or about the 3rd day of November, 1988, and continuing through on or about the 22nd day of November, 1988, in the Eastern District of Arkansas, defendants DAVID L. HALE, CHARLES MATTHEWS, AND EUGENE FITZHUGH, did conspire and agree together to commit offenses against the United States, that is in violation of 18 U.S.C. 1006, by agreeing to cause false entries in the books, reports, and statements of Capital-Management Services, Inc., a Small Business Investment Company, licensed by the Small Business Administration, in violation of 18 U.S.C. 645, by agreeing to cause false statements to be made to the Small Business Administration to influence its actions and to obtain money thereby, in violation of 18 U.S.C. 1001, by agreeing to conceal and cover up material facts in a matter within the jurisdiction of the Small Business Administration, an agency of the United States, and further agreed to defraud the United States.

It was a part of the conspiracy that defendant CHARLES MATTHEWS, then an employee of an investment firm would transfer

from an account held by said firm for a Louisiana Family, \$800,000.00 into another account at the firm in the name of Fitzhugh Foundation (defendant Eugene C. Fitzhugh), and the money would then be transferred in the sum of \$400,000.00 to Diversified Capital Investments (defendant David L. Hale), and would then be transferred to a savings account of Capital-Management Services, Inc., a Small Business Investment Company, principally owned by defendant DAVID L. HALE, and which company also would receive the other \$400,000.00 by way of cashier's checks purportedly in payment on certain problem loans made by the company to other entities in the past. DAVID L. HALE would then represent to Small Business Administration that he had invested \$400,000.00 into the company by virtue of a stock purchase with money his wife had obtained from the sale of real estate, as evidenced by \$400,000.00 now in the Capital-Management savings account, and the company would apply under the Small Business Investment Company Act, for \$900,000.00 from the Small Business Administration for the purpose of making loans to small businesses, the application showing, among other things, commitments to make a loan to "Corporations" in the sum of \$600,000.00 located at Mr. Matthews' home and office addresses.

It was also a part of the conspiracy that with the assistance of defendant, EUGENE C. FITZHUGH, defendant, DAVID L. HALE would then create and fund three transactions purportedly to Lame, Inc., River Valley Hydraulic and Supply, Inc., and McIntire Numismatic Auction, Inc., totaling \$800,000.00, with their entities, to in turn remit the money back to the account from which defendant

CHARLES MATTHEWS had originally transferred the \$800,000.00.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants in the Eastern District of Arkansas performed the following Overt Acts:

1.

2.

All in violation of 18 U.S.C. §371.

COUNT II

That on or about the 4th day of November, 1988, in the Eastern District of Arkansas, defendant, David L. Hale, willfully did make a statement knowing it to be false, for the purpose of influencing the actions of the Small Business Administration, in he represented his wife as the source of new capital he invested in Capital-Management Systems, Inc., his wife purportedly received the money from an August 14, 1988, sale of a small commercial center, wherein he knew that the source of funds was an account at a brokerage firm and the new "capital" was shown, all in violation of 18 U.S.C. §645.

COUNT III

That from on or about the 1st day of March, 1989, and continuing through on or about the 3rd day of March, 1989, in the Eastern District of Arkansas, defendants DAVID L. HALE, and CHARLES MATTHEWS, did conspire and agree together to commit offenses against the United States, that is in violation of 18 U.S.C. 1006, by agreeing to cause false entries in the books, reports, and



statements of Capital-Management Services, Inc., a Small Business Investment Company, licensed by the Small Business Administration, in violation of 18 U.S.C. 645, by agreeing to cause false statements to be made to the Small Business Administration to influence its actions and to obtain money thereby, in violation of 18 U.S.C. 1001, by agreeing to conceal and cover up material facts in a matter within the jurisdiction of the Small Business Administration, an agency of the United States, and further agreed to defraud the United States.

It was a part of the conspiracy that defendant CHARLES MATTHEWS, then an employee of an investment firm would transfer from an account held by said firm for a Louisiana Family, \$275,000.00 into a bank account of Retail Factors, Inc., and this would be transferred to Capital-Management Services, Inc., a Small Business Investment Company, principally owned by defendant DAVID L. HALE, by way of cashier's checks purportedly in payment on certain loans made by the company to other entities in the past. DAVID L. HALE would then represent to Small Business Administration that in connection with the company's application under the Small Business Investment Company Act, for \$900,000.00 funding, that certain loans questioned by the Small Business Administration had been paid off or were current.

It was also a part of the conspiracy that defendant, DAVID L. HALE, would then create and fund a transaction with Liberty Mortgage Company in the sum of \$275,000.00 with it to in turn transfer the money back to the account which defendant CHARLES

MATTHEWS had originally transferred the \$275,000.00.

OVERT ACTS

In furtherance of the conspiracy and to effect the objects thereof, the defendants in the Eastern District of Arkansas performed the following Overt Acts:

- 1.
- 2.

All in violation of 18 U.S.C. §371.

COUNT IV

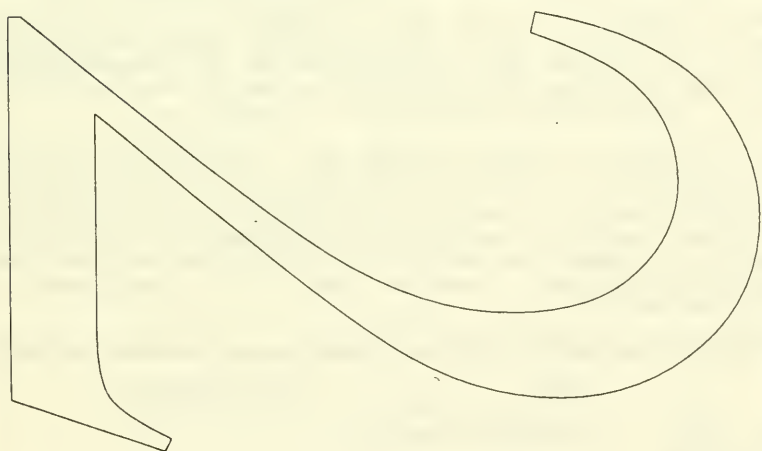
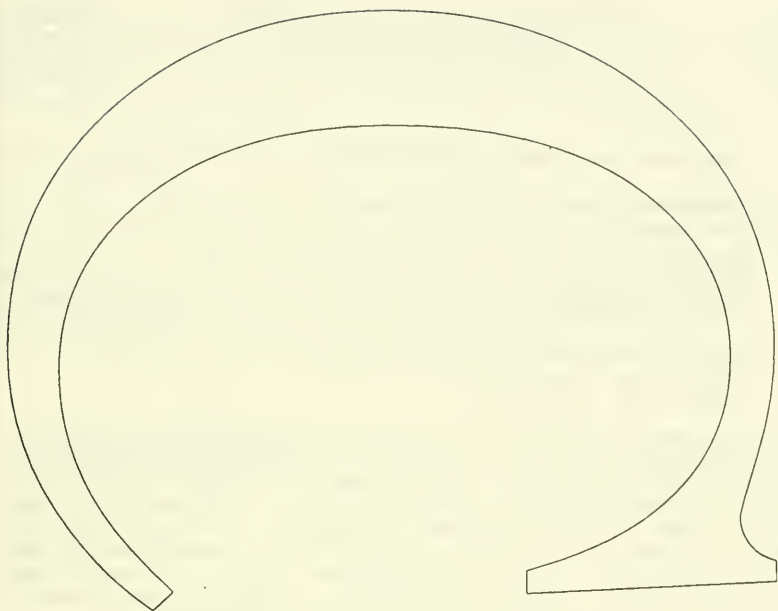
That on or about the 29th day of May, 1988, in the Eastern District of Arkansas, defendant, DAVID L. HALE, willfully did make a statement knowing it to be false for the purpose of influencing the actions of the Small Business Administration in a Form 1031, that is that the financing as to Liberty Mortgage, Inc., was for working capital. All in violation of 15 U.S.C. §645.

A TRUE BILL.

\_\_\_\_\_  
FOREMAN

Prepared by:

\_\_\_\_\_  
FLETCHER JACKSON  
Assistant U.S. Attorney  
P.O. Box 1229  
Little Rock, AR 72203



P



U.S. SMALL BUSINESS ADMINISTRATION  
WASHINGTON, D.C. 20416



DATE: September 21, 1993

TO: Erskine Bowles,  
Administrator

FROM: *Wayne S. Foren*  
Wayne S. Foren,  
Associate Administrator  
for Investment

RE: Capital Management Services, Inc.  
Little Rock, Arkansas  
License No. 06/06-5207

SBA was appointed receiver of Capital Management Services, Inc. (CMS) on September 15, 1993, by Court Order in Civil Action No. LR-C-93-646 in the U.S. District Court for the Eastern District of Arkansas, Western Division. SBA was appointed Receiver for the purpose of liquidating all of CMS' assets and satisfying the claims of CMS' creditors in the order of priority as determined by the Court. Judge David L. Hale, the president and a director of the licensee, consented to the receivership. Judgment was rendered against CMS in favor of the SBA for the sum of \$3,816,154.21 plus accrued interest, dividends and post judgment interest.

On Monday, September 20, 1993, Mark K. Stephens, Associate General Counsel, and Cecilia Seay, the Receiver's agent retained to liquidate CMS, closed the bank accounts of CMS (approximately \$3,200 remained in the bank accounts), seized the records of CMS, and are in the process of martialling the assets.

The U.S. Attorney's office informed Mr. Stephens that they are scheduled to make a presentation to the Grand Jury on Tuesday, September 21, 1993, at 3:00 p.m. and are expecting indictments to be returned on Tuesday or Wednesday, September 21 or September 22, 1993 against Judge Hale and two other individuals. Judge Hale's attorney, Mr. Coleman, has indicated that Judge Hale may step down from his position as a municipal judge if the indictment is returned against him.

Ownership and Management of the Licensee (as represented to SBA):

| <u>NAME</u>    | <u>TITLE</u>       | <u>% OF OWNERSHIP</u> |
|----------------|--------------------|-----------------------|
| David L. Hale  | President/Director | 82                    |
| Linda S. Hale* |                    | 9                     |
| Hazel Dennis   |                    | 9                     |
| James Hall     | Secretary/Director |                       |
| George Ivory   | Vice President     |                       |

\* David Hale's wife.

SBA provided financing to CMS through the purchase/guarantee of three subordinated debentures totalling \$2,000,000 (\$500,000 dated November 30, 1983, \$1,000,000 dated September 8, 1986, and \$500,000 dated March 17, 1989) and the purchase of \$1,400,000 in preferred stock (\$500,000 in 1980, \$500,000 in 1986, and \$400,000 in 1989).

Failure to inform SBA of Capital Impairment is the violation stated in the Complaint. CMS is approximately 171% capitally impaired.

Per the last Financial Statement (SBA Form 468) submitted to the SBA dated September 30, 1992, CMS maintained a cash balance of \$51,819, and owned 15 notes and 7 equities with a total principal balance outstanding and valuation for the same sum of \$2,214,402. At September 20, 1993, approximately \$3,200 cash remained in the CMS bank accounts. The Office of Liquidation believes that many of the listed portfolio assets are questionable or do not exist.

cc: John T. Spotila  
Martin D. Teckler





**DEPOSITION OF WEBSTER L. HUBBELL  
IN RE: S. RES. 120**

---

**THURSDAY, OCTOBER 26, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of WEBSTER L. HUBBELL, called for examination pursuant to notice of deposition, at 12:25 p.m. in Room 640-A of the Hart Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

ROBERT J. GIUFFRA, JR., Esq.  
Majority Chief Counsel  
ALICE S. FISHER, Esq.  
Majority Deputy Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

CHARLES J. SGRO, Esq.  
PAUL J. FISHMAN, Esq.  
ROSS WIENER, Esq.  
U.S. Department of Justice  
Tenth Street & Constitution Avenue, NW  
Washington, DC 20530  
On behalf of the Deponent.

**APPEARANCES**

LAURA S. SHORES, Esq.  
Howrey & Simon  
1299 Pennsylvania Avenue, NW  
Washington, DC 20004-2402  
On behalf of the Deponent.

ALSO PRESENT: JENNIFER M. SWARTZ  
TIMOTHY P. MITCHELL

U.S. MARSHALS PRESENT:  
STEVE McGOVERN  
GEORGE COLLINS  
JOHN GIBSON

## CONTENTS

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**WITNESS****EXAMINATION****Webster L. Hubbell**

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by Mr. Kravitz ..... 174

## 1 PROCEEDINGS

2 Whereupon,

3 WEBSTER L. HUBBELL

4 was called as a witness and, having first been duly  
5 sworn, was examined and testified as follows:

## 6 EXAMINATION

7 BY MR. GIUFFRA:

8 Q Good afternoon, Mr. Hubbell. My name is  
9 Robert Giuffra. I am the chief counsel of the Senate  
10 Banking Committee. To my left is Neil Kravitz, who  
11 is the principal Democratic deputy special counsel --

12 MR. KRAVITZ: We've met.

13 MR. GIUFFRA: -- to the Senate Whitewater  
14 Committee.

15 BY MR. GIUFFRA:

16 Q Just some preliminaries. This is a  
17 deposition that is being conducted pursuant to Senate  
18 Resolution 120. This resolution establishes a  
19 Special Committee administered by the Banking  
20 Committee to conduct an investigation involving  
21 Whitewater Development Corporation, Madison Guaranty  
22 Savings & Loan Association, Capital Management



1 Services, Inc., the Arkansas Development Finance  
2 Authority and other related matters.

3 This is a deposition that's being conducted  
4 in advance of a public hearing which will begin  
5 sometime in November. The format today, as I'm sure  
6 you're aware from having been a witness previously,  
7 will be I will ask some questions and Mr. Kravitz  
8 will ask some questions. You will be testifying  
9 under oath. If at any time you don't understand a  
10 question or need a break, let us know.

11 A Okay.

12 Q You have a right to be represented by  
13 counsel. I see you have chosen to be represented by  
14 counsel. If counsel would identify themselves for  
15 the record.

16 MS. SHORES: Laura Shores from the law firm  
17 of Howrey & Simon in Washington.

18 MR. GIUFFRA: Mr. Fishman, I see, is here.

19 MR. FISHMAN: Paul Fishman with Charles  
20 Sgro and a law clerk from our office, Ross Wiener,  
21 representing the Department of Justice.

22 BY MR. GIUFFRA:

1 Q The procedure we'll be following will be  
2 that the deposition will be treated as committee  
3 confidential until the hearings. You will get an  
4 opportunity to review the transcript, make any  
5 corrections on an errata sheet.

6 A Okay.

7 Q There's also a procedure with regard to  
8 objections, and objections can be stated to the form  
9 of the question. Also, there's a procedure for  
10 dealing with relevance objections involving getting a  
11 ruling from Chairman D'Amato.

12 Do you or your counsel have any questions  
13 or should we just begin?

14 A Not right now.

15 MR. KRAVITZ: I have one question. Will  
16 there be any special arrangements for Mr. Hubbell to  
17 be able to review his transcript in light of the fact  
18 that I assume there would be some difficulty in his  
19 coming here to review it?

20 MR. GIUFFRA: Certainly I think the  
21 Committee would make an accommodation to Mr. Hubbell  
22 to get a copy of his transcript perhaps to his

1 counsel and counsel could have it transported to the  
2 appropriate place where he can review it.

3 THE WITNESS: Fine.

4 BY MR. GIUFFRA:

5 Q Mr. Hubbell, would you would just state  
6 your name for the record.

7 A My name is Webster Lee Hubbell.

8

9

10

11 Q Mr. Hub, who is Gill Glover?

12 A Gill Glover. Name sounds familiar from  
13 Arkansas, but I don't know.

14 Q Not someone who is a close acquaintance of  
15 yours?

16 A Not a close acquaintance. The name sounds  
17 familiar, and I'm sure if you reminded me, I could  
18 come up with it.

19 Q If I told you that he was the husband of  
20 Paula Casey, would that refresh your recollection in  
21 any way?

22 A No.

1 Q Now, just very briefly, you worked at  
2 Department of Justice beginning sometime in 1993; is  
3 that correct?

4 A I started in January 21, 1993.

5 Q And what position did you hold?

6 A I began there as a special assistant to the  
7 Attorney General and sometime in April became acting  
8 Associate Attorney General and in May became  
9 Associate Attorney General.

10 Q And during the period when you were  
11 Associate Attorney General, what were your  
12 responsibilities in the department?

13 A I was responsible for -- this will take a  
14 minute -- what I call the civil divisions, which  
15 included the civil division, the tax division,  
16 antitrust division, the environmental division, the  
17 Office of Legal Counsel, civil rights division. I  
18 also supervised the Immigration and Naturalization  
19 Service and the Office of Legislative Affairs.

20 I worked on a daily basis with the Attorney  
21 General and the Deputy Attorney General on assigning  
22 issues and had several other departments report to

1 me. If you want me to try to remember them all, I  
2 will.

3 Q Did you have any responsibility for  
4 criminal matters?

5 A Only criminal matters that came out of what  
6 were called the civil divisions. In other words, if  
7 there was a criminal civil rights case or a criminal  
8 environmental case or a criminal tax case, then I  
9 would have immediate direct supervision over those,  
10 but the criminal division itself and those arms of  
11 law enforcement reported directly to the Deputy  
12 Attorney General.

13 Q Are you aware, sir, that the Committee has  
14 sent a document request to you for certain documents  
15 in connection with this phase of its investigation?

16 A I saw it today.

17 Q Are you aware of any documents that are  
18 called for by that request that have not been turned  
19 over to the Committee?

20 A I don't know what's been turned over to the  
21 Committee, but I'm confident in the ability of my  
22 lawyer to turn those documents over, so I believe

---

10

1 they all have, but I don't know what's been turned  
2 over.

3 Q To the extent I can, I will try not to run  
4 through questions that you've been previously asked  
5 at the House Banking Committee, and I will try to  
6 move as expeditiously as possible.

7 A Okay, that's fine.

8 Q When did you first learn of an RTC criminal  
9 referral relating to Madison Guaranty Savings & Loan  
10 Association?

11 A Sometime in the late summer or early fall  
12 of 1993.

13 Q And how did you learn of -- just to  
14 describe it generically as the Madison referral, how  
15 did you learn of the Madison referral?

16 A There was a memo from the Executive Office  
17 of U.S. Attorneys that went to the Attorney General  
18 that I in the normal course of correspondence going  
19 to the Attorney General received a copy of. They are  
20 called urgent memos about sensitive matters, and a  
21 copy of that memo came across my desk.

22 Q Do you recall whether you saw a number of

1 urgent memos regarding the Madison referral or just  
2 one?

3 A My recollection is that I received one.

4 Q What do you recall about the urgent memo  
5 with regard to Madison, the Madison referral?

6 A I don't -- the word "referral" came up  
7 later. It had something to do with the RTC. I saw  
8 the names Madison, I saw the names Jim and Susan  
9 McDougal. And that's -- and I put it to assign and  
10 sent it back, so to speak.

11 Q Do you recall whether there was an  
12 attachment to the urgent memo?

13 A No.

14 Q Do you recall anything more about this  
15 urgent memo?

16 A No. I mean in the normal -- I can tell you  
17 what normally they look like, which was that there  
18 would be a summary of what action was being taken at  
19 an office of the U.S. Attorneys that might be  
20 sensitive, and that's what I remember about that  
21 document. I don't remember any attachments and I  
22 certainly don't remember the actual referral itself.

12

1 Q Now, just to go back over the chronology  
2 just briefly, you became the acting Associate  
3 Attorney General at what time?

4 A I think sometime in April of 1993.

5 Q Between January and April 1993, you were  
6 the special assistant to Mr. Gerson?

7 A To Mr. Gerson and then Ms. Reno.

8 Q In that capacity as a special assistant to  
9 Mr. Gerson, would you have been copied on urgent  
10 memos?

11 A No, although I saw certain urgent memos in  
12 the course of my duties as assistant to the Attorney  
13 General or special assistant. I really don't  
14 remember what my title was. It was either assistant  
15 or special assistant.

16 Q But you can't recall whether urgent memos  
17 were routed to you?

18 A They weren't routed to me, but I saw  
19 certain memos in the course of my duties.

20 Q Do you know whether you saw -- would you  
21 have seen all of the urgent memos that the Attorney  
22 General would have seen during this period?

1 A I can't -- which Attorney General?

2 Q Attorney General -- let's go through,  
3 Attorney General Gerson, would you have seen them?

4 A I know that I did not with regard to  
5 Mr. Gerson.

6 Q Would you have seen all of the urgent memos  
7 that would have been sent to Ms. Reno?

8 A I normally would have seen the urgent memos  
9 that would have gone to Ms. Reno. I can't say that I  
10 saw all of them.

11 Q Are you aware, sir, that there were a  
12 number of criminal referrals relating to Madison  
13 Guaranty?

14 A I've heard there were.

15 Q Do you recall whether this urgent memo  
16 referenced the criminal referral bearing the number  
17 C0004, which is known as the first criminal referral?

18 A No, I do not.

19 Q Mr. Hubbell, did you know Charles Banks?

20 A Yes, I did. I do.

21 Q During the period when you were working at  
22 the Justice Department, did you ever speak to

1 Mr. Banks?

2 A I don't believe so.

3 Q Do you know a Ms. Anspaugh,  
4 A-n-s-p-a-u-g-h?

5 A I recognize the spelling, but I don't know  
6 who she is. And I may have seen it in a newspaper  
7 somewhere or in the million of documents I've looked  
8 at for the last two years.

9 Q And you knew Mr. McDougal, I assume, from  
10 Arkansas?

11 A I have met Mr. McDougal.

12 Q Did you meet -- have you met him on a  
13 number of occasions?

14 A Not really.

15 Q No specific recollection of meeting  
16 Mr. McDougal?

17 A No, no, I don't.

18 Q Now, would urgent memos have been routed  
19 through the Deputy Attorney General's office?

20 A They went from the Executive Office of U.S.  
21 Attorneys to the Office of Executive Secretary, and  
22 then they would have been routed, copies would have



1 gone to me, the deputy, in some cases the affected  
2 division and the Attorney General.

3 Q Let me show you a document which bears  
4 Bates number 6671 that you received from the  
5 Department of Justice.

6 (Witness reviewed the document.)

7 Mr. Hubbell, have you ever seen this  
8 document before?

9 A Yes.

10 Q When have you seen this document  
11 previously?

12 A When it was presented to me before the  
13 grand jury.

14 Q Did you see the document during the period  
15 when you worked at the Department of Justice?

16 A No.

17 Q So it would be your testimony that this is  
18 not the document that you saw which was a memo from  
19 Mr. Voscato discussing the Madison referral?

20 A That's correct.

21 MS. SHORES: I'm sorry. Did you say it  
22 came from Voscato?

1 MR. FISHMAN: Off the record.

2 (Discussion off the record.)

3 BY MR. GIUFFRA:

4 Q The urgent report that you saw, the  
5 initial -- which referenced Madison Guaranty, that  
6 was from Mr. Moscato; am I correct?

7 A I don't know. It was from -- most of them  
8 came from the Executive Office of U.S. Attorneys, so  
9 I'm assuming it's from Mr. Moscato, but I don't  
10 recall who was the author of the memo.

11 Q Would an urgent report from the Executive  
12 Office of U.S. Attorneys have been written by anyone  
13 other than Mr. Moscato to the Attorney General?

14 A I don't know.

15 Q Do you recall seeing any urgent reports  
16 from anyone other than Mr. Moscato to the Attorney  
17 General?

18 A Yes. If I can help on that, all the  
19 urgent -- there is a kind of cover sheet at the  
20 Justice Department that's green that's got "urgent  
21 report" on top of it. More than the Executive Office  
22 of U.S. Attorneys use it, I think. I mean, I just

1 remember seeing a bunch of green memos over there.  
2 They have green cover sheets, so that's why I think  
3 other than Tony would send them, but I may be wrong.  
4 I got a bunch of them.

5 Q Did you work on a daily basis with  
6 Mr. Gerson?

7 A Yes.

8 Q You actually worked in his physical office?

9 A No.

10 Q But you worked with him on a daily basis?

11 A I saw him every day.

12 Q Did Mr. Gerson ever discuss with you  
13 anything having to do with a criminal referral, RTC  
14 criminal referral, involving Madison Guaranty?

15 A No, he did not.

16 Q Did he ever discuss with you any matter of  
17 any nature regarding Madison Guaranty?

18 A Madison, no.

19 Q Did he ever discuss with you any matter  
20 regarding Mr. McDougal?

21 A Mr. McDougal, no.

22 Q Did he ever discuss with you a matter being

1 investigated in the Eastern District of Arkansas  
2 involving the President and Mrs. Clinton?

3 A No, he did not.

4 Q Now, it's your testimony that the first  
5 time you learned of what we've defined as the Madison  
6 criminal referral was late summer -- early fall in  
7 connection with an urgent report; correct?

8 A That's correct.

9 Q Do you recall taking any action with regard  
10 to that Madison criminal referral?

11 A Me taking any action?

12 Q Yes.

13 A Other than to put the memo back in my out  
14 box, no.

15 Q Did you ever speak with anyone about the  
16 Madison criminal referral?

17 A Yes.

18 Q When did you first speak with someone about  
19 the Madison criminal referral?

20 A When the issue was raised with me and I  
21 recused.

22 Q And when was the time that you recused?

1 A At some point Carl Stern at the Justice  
2 Department asked me to give him some background on  
3 the people involved with regard to inquiries he was  
4 getting about Madison Guaranty.

5 Q And Mr. Stern was the press spokesman for  
6 the Justice Department?

7 A That's correct. At that same point, Irv  
8 Nathan, who was the principal -- I can't say  
9 principal deputy, associate deputy or principal  
10 associate deputy for Phil Heymann --

11 Q You don't want to offend Mr. Fishman here.

12 MR. FISHMAN: You won't offend me. You  
13 might offend Mr. Nathan.

14 (Laughter.)

15 THE WITNESS: Whatever, he was Phil's right  
16 arm, he was there and he said Web, you need to stay  
17 out of that, your firm used to represent Madison. I  
18 said you're right, Irv, and I said I'm recused, and  
19 that was the extent of that conversation.

20 BY MR. GIUFFRA:

21 Q Do you recall approximately when that was?

22 A My best estimate is it was sometime in

---

20

1 early October.

2 Q Before you made the judgment to recuse  
3 yourself, did you discuss it with anyone other than  
4 Mr. Nathan and Mr. Stern?

5 A No, it was done on the spot.

6 Q On the spot. After you recused yourself,  
7 did you discuss with anyone the fact that you had  
8 recused yourself from matters involving Madison  
9 Guaranty?

10 A Yes, I did.

11 Q Who did you discuss the fact that you were  
12 recusing yourself from matters involving Madison  
13 Guaranty with?

14 A I'm sure the Attorney General was told. At  
15 some point I began to work with Dave Margolis,  
16 probably Janice Sposata, but I'm not for sure, or  
17 somebody in her office.

18 Q Who is Janice Sposata?

19 A At that time she was what I considered the  
20 principal ethics officer at the Justice Department.  
21 I can't tell you her specific title. She worked  
22 with -- I used to be able to do this, a woman names

1 Mary Bisenbach, and I'm not sure out of whose office  
2 they worked out of. I believe it was Steve Colgate's  
3 office, but I'm not definite about that. And I would  
4 have -- and I know Dave Margolis was involved in  
5 formalizing and expending the recusal. And I'm sure  
6 Phil knew about it as well, Phil Heymann.

7 Q What do you recall about your discussion  
8 with Mr. Margolis with regard to your recusal from  
9 matters involving Madison?

10 A The Whitewater/Madison, I think, questions  
11 were coming up about my recusal, how extensive it  
12 was. Normally Janice recommended that recusals not  
13 be in writing, but in this case we thought -- one of  
14 the other issues was to stop any flow of paper from  
15 coming to my office. And I think it was Dave  
16 Margolis who suggested that the best way to prevent  
17 the Office of Executive Secretary from sending a  
18 piece of paper to my office that even if I was  
19 recused might go to one of my deputies, would be for  
20 my entire office to be recused, so that document was  
21 prepared for my signature and it was signed in early  
22 November.

22

1 Q When you spoke with Mr. Margolis about this  
2 referral, did you have any understanding as to  
3 whether he had any knowledge of the referral,  
4 independent knowledge of the referral?

5 A I had the impression that he did. I don't  
6 know if he did or didn't.

7 Q Did he indicate to you in any way that he  
8 had reviewed the referral?

9 A No.

10 Q Did he indicate to you that the referral  
11 made reference to President and Mrs. Clinton?

12 A No, because I've never seen the referral.  
13 I don't know that it does to this day.

14 Q In looking at your telephone logs which  
15 you've produced, there's a reference to a person by  
16 the name of Amy Stewart. Who is Amy Stewart?

17 A Amy Stewart is a partner at the Rose Law  
18 Firm.

19 Q During May of 19 -- strike that.

20 During May of 1993, was Ms. Stewart in  
21 Washington, D.C.?

22 A Yes.

1 Q Why was Ms. Stewart in Washington, D.C.?

2 A She was assisting me in preparing for my  
3 confirmation hearings, and at some point, but I think  
4 that was much later, she was assisting in looking at  
5 some antitrust issues on the health care task force.

6 Q Did Ms. Stewart have any role in connection  
7 with an investigation into billing matters at the  
8 Rose Law Firm?

9 A Not that I know of.

10 Q Other than persons you've already  
11 mentioned, did you discuss anything having to do with  
12 Madison with anyone else at the Department of  
13 Justice?

14 MR. KRAVITZ: Ever?

15 BY MR. GIUFFRA:

16 Q During 1993.

17 A Well, after I recused, I'm sure I talked  
18 about it with several people in my office as the  
19 newspaper articles would hit, including Nancy  
20 McFadden, my secretary Kathy Gallagher, and others.  
21 I just couldn't tell you all the people I might have  
22 talked about it with once everything was in the

1 newspapers.

2 Q Prior -- what was the date of your recusal?

3 A In early November.

4 MR. KRAVITZ: Just so the record is clear,  
5 are you asking him about when he said orally that he  
6 was recusing himself or when he signed that memo?

7 THE WITNESS: I thought he was meaning the  
8 written recusal.

9 BY MR. GIUFFRA:

10 Q Let's ask both questions so the record is  
11 clear. Did you orally indicate that you were going  
12 to recuse yourself from matters involving Madison?

13 A My recollection is it was several weeks  
14 before the written recusal, like early October.

15 Q What was the date of the written recusal,  
16 if you can recall?

17 A Like November 2 or something like that. I  
18 used to know that by memory.

19 MR. KRAVITZ: Do you want to show it to him  
20 so that the record is accurate? My understanding is  
21 it was November 3.

22 MS. SHORES: Right.



1 MR. KRAVITZ: It's consistent with what he  
2 said, but --

3 THE WITNESS: Actually, I think the letter  
4 says that I recused earlier but that now I'm recusing  
5 my office.

6 MR. KRAVITZ: Do you want to show it to  
7 him?

8 BY MR. GIUFFRA:

9 Q Let me show you a document which bears  
10 Department of Justice Bates number 16848. It's a  
11 memorandum to the Attorney General and Deputy  
12 Attorney General and acting Assistant Attorney  
13 General for the criminal division from Web Hubbell.

14 A Okay, I see.

15 Q Is that the written recusal that you sent  
16 to the Attorney General?

17 A It's a memo about recusal where I'm  
18 recusing my office, if we want to get really  
19 accurate, but it does talk about my prior recusal and  
20 I'm recusing the office of the Associate Attorney  
21 General.

22 Q And the date is November 3?

1 A Right.

2 Q Mr. Kravitz wins the Jeopardy award.

3 I would like to focus on the period January  
4 20, 1993 through November 3, 1993. During that  
5 period, did you discuss anything having to do with  
6 Madison with Bill Kennedy?

7 MR. KRAVITZ: I'm sorry, Bob. I was taking  
8 notes. What's the time period?

9 MR. GIUFFRA: January 20, 1993 through  
10 November 3, 1993.

11 MR. KRAVITZ: Thanks.

12 THE WITNESS: I'm sure I did.

13 BY MR. GIUFFRA:

14 Q What do you recall discussing with Bill  
15 Kennedy about Madison during that period?

16 A Well, after the matters hit the newspaper,  
17 I'm sure we talked about that Whitewater was coming  
18 back up and McDougal was coming back up, but  
19 specifically anything, I don't recall. I mean it  
20 would have been more of a general discussion. I  
21 don't remember whether I told Bill when I recused or  
22 not. We had a discussion about Randy Coleman calling

1 him. That, I think, occurred during that time  
2 period.

3 Q Go ahead.

4 A I mean there would have been a lot of  
5 things we would have discussed, but I don't recall  
6 any of that coming up, except after it started  
7 hitting the newspapers, and I think that time period  
8 was starting in September.

9 Q So it would be your testimony that prior to  
10 September 1993, you would not have -- say, between  
11 January 1993 and September 1993, you would not have  
12 discussed Madison or Whitewater with Mr. Kennedy?

13 A I don't know after Vince's death whether  
14 the subject of the Whitewater tax returns came up  
15 prior to those discussions about everything else or  
16 not.

17 Q Do you have a recollection of discussing  
18 the Whitewater tax returns with Mr. Kennedy after  
19 Mr. Foster's death?

20 A I don't know whether I did or not. I'm  
21 trying to be as accurate as I can that it's likely  
22 that as we discussed Vince's death, one of the issues

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1 might have been that we knew -- I knew that Vince was  
2 working on the Whitewater tax returns, and who was  
3 going to take over that responsibility and other  
4 personal responsibilities of the Clintons, so I don't  
5 know if I did or not, but I'm trying to be accurate  
6 in saying that it's possible that I could have.

7 Q How did you know that Mr. Foster was  
8 working on the Whitewater tax return during the  
9 period January -- strike that.

10 Were you aware that Mr. Foster was working  
11 on the Whitewater tax return during the time when he  
12 was serving as deputy counsel to the President?

13 MR. KRAVITZ: Bob, I'm going to object.  
14 This was the subject of lengthy questioning in  
15 Mr. Hubbell's deposition by a member of your staff  
16 this summer. I mean, I don't object to a couple of  
17 questions.

18 MR. GIUFFRA: Just a couple of questions.

19 MR. KRAVITZ: If you just want to focus the  
20 inquiry for some new questions, that's fine. I  
21 really don't think we should spend everyone's time  
22 going back over things that are covered in several

1 hundred pages of transcripts.

2 MR. GIUFFRA: It's for purposes of  
3 obtaining a date reference.

4 THE WITNESS: At some time yes, I knew that  
5 Vince was working on the Whitewater tax return.

6 BY MR. GIUFFRA:

7 Q During the time that he was deputy White  
8 House counsel?

9 A Yes.

10 Q During the period January through September  
11 1993, do you recall discussing, let's describe it as  
12 the Madison/Whitewater issue generically, just to try  
13 to speed this thing up, because I can do both.

14 MR. KRAVITZ: Is that defined as S Res  
15 120?

16 MR. GIUFFRA: We could do that.

17 BY MR. GIUFFRA:

18 Q Did you have any discussions with President  
19 Clinton about anything having to do with Madison or  
20 Whitewater?

21 A Between January and --

22 Q September 1993.

---

30

1 A September of '93?

2 Q Yes.

3 A Probably not, no.

4 Q Is your answer definitely no or you would  
5 not be sure?

6 A From January until when it started hitting  
7 the newspapers, the answer is no. I can't tell you  
8 when the first newspaper articles in generic terms of  
9 Whitewater/Madison were. My recollection is it was  
10 in September, but I don't -- you know, I didn't read  
11 every newspaper. So until it started hitting the  
12 newspaper, I know I did not. I can't tell you when  
13 we first started talking about it.

14 Q Prior to the time when Whitewater/Madison  
15 hit the newspaper, do you recall having any -- and  
16 this is from the period January until that time, do  
17 you recall of any discussions with the First Lady  
18 about those issues?

19 A No, I do not. Same as the President.

20 Q And other than Mr. Kennedy, to speed this  
21 up, do you recall discussing -- strike that.

22 Between January and September 1993, do you

1 recall discussing Madison/Whitewater issues with  
2 anyone?

3 A Until it hit the newspapers, and let's  
4 assume that's September, the only person I would have  
5 talked about any issue would have been Vince Foster.

6 Q After Whitewater hit the newspaper in  
7 September 1993, do you recall anything about your  
8 discussions with President Clinton about the subject  
9 matter of Whitewater?

10 A The only specific conversation I recall was  
11 one where we -- I believe we were flying back from  
12 his mother's funeral and he asked me the question,  
13 did I think that Whitewater/Madison would ever end,  
14 so I remember that conversation.

15 MR. KRAVITZ: Were you right?

16 THE WITNESS: Yes.

17 (Laughter.)

18 So I do remember that conversation but that  
19 was late in the day. I don't remember any other  
20 conversations directly about that.

21 BY MR. GIUFFRA:

22 Q After Whitewater hit the press in September

1 1993, do you recall any conversations about  
2 Madison/Whitewater with the First Lady?

3 A It is possible in the same context I had  
4 one, but I don't recall any specific conversation.

5 Q Do you know David Hale?

6 A I do know David Hale. Not well, but I know  
7 David.

8 Q Could you just state for the record how you  
9 know David Hale?

10 A He was a lawyer in Arkansas. His family --  
11 I'm not sure exactly what his relationship was to the  
12 municipal judge over in north Little Rock, but they  
13 were related, so when I first started practicing,  
14 there was some relationship there. I knew that he  
15 became the county municipal judge, and I know that  
16 doesn't make any sense, but there was a specific  
17 title of county municipal judge that he held.

18 So I knew him that way, and I knew that he  
19 was involved in investments in the area of town that  
20 I lived in, so I knew him that way. I would see him  
21 when I would have breakfast at a local restaurant  
22 there. So I knew him -- I would know him if I saw

1 him, but I didn't have any business or social  
2 relationship with him.

3 Q When was the first time you heard of an  
4 entity called Capital Management Services?

5 A Well, my memory has been refreshed by all  
6 these proceedings, so I believe the first time was  
7 around the time that our firm took on the  
8 representation of Madison against Frost & Company.

9 Q And when was that?

10 A In -- boy. I believe it was in early 1989,  
11 March of '89.

12 Q One other question, just going back. When  
13 you spoke to Mr. Kennedy, I believe you said it was  
14 in September roughly --

15 A Right.

16 Q -- did you indicate to him in any way that  
17 you had seen a criminal referral or document  
18 referencing a criminal referral involving Madison?

19 A No, I did not.

20 Q Could you just please describe for the  
21 record anything more you recall about when you first  
22 learned about Madison -- strike that -- Capital

1 Management in March of '89?

2 A In March of '89 -- and I don't have the  
3 documents in front of me -- when we took on the  
4 representation of Madison -- and when I say Madison,  
5 it was actually the FDIC is I think conservator for  
6 Madison -- David Hale called me and asked if we  
7 would, at the same time we were suing Frost on behalf  
8 of Madison, would we represent his entity against  
9 Frost as well.

10 Q And did you decide to take on that  
11 representation?

12 A No. We declined to do that after his  
13 lawyer sent some documents to the firm and ultimately  
14 we told him that we would not do it.

15 Q Was Mrs. Clinton involved at all in those  
16 conversations with Mr. Hale?

17 A No.

18 Q Do you know whether Mrs. Clinton knows  
19 Mr. Hale?

20 A My recollection was that David was active  
21 in Democratic politics, so I'm sure -- I shouldn't  
22 say that. I don't know that. I would be surprised



1 if she hadn't met him in connection with Democratic  
2 politics.

3 Q Do you know whether Mr. Hale knew  
4 then-Governor Clinton?

5 A For the same reason, yes, but I don't know  
6 that.

7 Q Never attended any meetings at which  
8 Governor Clinton and Mr. Hale were present?

9 A No, I did not.

10 Q Did you ever attend any meetings at which  
11 Mr. Hale and the First Lady were present?

12 A No, I did not.

13 Q Did Bill Kennedy know Mr. Hale?

14 A I can't tell you.

15 Q After declining the representation of  
16 Capital Management in March of '89, when do you  
17 recall was the next time that the entity Capital  
18 Management came in contact with you?

19 A My recollection is that sometime during the  
20 campaign in the summer of '92, there was a newspaper  
21 article which indicated that David Hale was under  
22 investigation and likely to be indicted and the issue

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1 of Capital Management came up, not in connection with  
2 the Clintons, but that's my next recollection of  
3 Capital Management.

4 Q And that would be in the Arkansas  
5 newspapers?

6 A Yes. Now, when we were doing the Frost  
7 litigation, the Capital Management, there was some  
8 loans involving Capital Management and they were --  
9 we looked at those. When I say "we," members of the  
10 Rose Law Firm who were working on that case.

11 Q Do you recall the loans that you would have  
12 looked at?

13 A I do remember some loans. Specifically  
14 which ones, I couldn't tell you. I mean off the top  
15 of my head, but they were all -- any loans involving  
16 Madison Savings & Loan and Capital, we would have  
17 looked at in connection with that litigation.

18 Q Which members of the Rose Law Firm worked  
19 on the Frost matter?

20 A Lawyer named Rick Donovan, myself and a  
21 lawyer named Gary Speed.

22 Q After reading about possible investigation

1 of Mr. Hale in the summer of '92 in the Arkansas  
2 papers, when was the next time that you recollect  
3 having contact of any nature with either Capital  
4 Management or Mr. Hale?

5 A When I read the article that Mr. Hale's  
6 lawyer had attempted to call Mr. Kennedy.

7 Q And do you recall when you read the article  
8 that Mr. Hale's lawyer had attempted to contact  
9 Mr. Kennedy?

10 A Sometime in September or October of '93. I  
11 want to be accurate. That article triggered a memory  
12 of a conversation I had with Bill Kennedy prior to  
13 that.

14 Q Do you know a lawyer by the name of Richard  
15 Mayes?

16 A Yes, I do.

17 Q Who is Richard Mayes?

18 A Richard Mayes is a lawyer who served on the  
19 Supreme Court of Arkansas. He's an African-American  
20 lawyer. He did a lot of civil rights litigation in  
21 about -- and practiced at the same time I did. He  
22 was active in some municipal issues and therefore I

1 had some contact with him. We had a lot of mutual  
2 friends.

3 Q During the period January 1993 through  
4 September 1993, do you have any recollection of  
5 speaking with Mr. Mayes?

6 A I think I had lunch with Richard or dinner  
7 with Richard on one occasion, maybe two. I'm sure I  
8 saw Richard at several functions, cocktail parties or  
9 functions where Arkansas people were -- who were up  
10 here.

11 Q Do you recall when you had dinner with  
12 Mr. Mayes?

13 A No, but I don't have any calendar with me.  
14 It's probably on my calendar. I think it was dinner,  
15 it could have been lunch or it could have been both.

16 Q You don't have a recollection as to the  
17 time?

18 A Specific time, no.

19 Q Let's discuss your relationship with a  
20 man -- a lawyer named Randy Coleman.

21 A A lawyer? He's a man, too.

22 Q You asked the question better than I did.

1 How do you know Mr. Coleman?

2 A Randy was a lawyer practicing in Arkansas  
3 as well, Little Rock. He was in a law firm that we  
4 had a lot of litigation with. He represented some  
5 clients in litigation that I was involved in, so I  
6 knew Randy in that way. So he was another lawyer. I  
7 don't think again socially I ever had any connection  
8 with Randy but I certainly saw him at Bar activities  
9 and things of that sort, and in connection with cases  
10 we had.

11 Q What was the nature of Mr. Coleman's legal  
12 practice? What is your understanding of the nature  
13 of Mr. Coleman's legal practice?

14 A I guess you'd say -- would you want to  
15 limit it to the around the time I left Arkansas?

16 Q Yes.

17 A It was -- he did some criminal work. He  
18 did some divorce work. He was primarily I would say  
19 a general practitioner, did some securities  
20 litigation, used to do -- I think Randy did a bunch  
21 of condemnation work for the highway department.

22 Q You just previously testified that you

1 spoke with Mr. Kennedy sometime prior to September  
2 1993 about conversations that he had had with  
3 Mr. Coleman?

4 A I don't know if it was prior to September.  
5 It was prior to the conversation I had with  
6 Mr. Kennedy after the articles hit and the articles  
7 said that Randy had tried to reach Bill. I don't  
8 know when those articles hit, but sometime prior to  
9 that, to those articles, Bill and I had a brief  
10 conversation about Mr. Hale.

11 Q What did Mr. Kennedy say to you about that  
12 conversation?

13 A Mr. Kennedy called me to ask if I knew of  
14 any connection between Mr. Hale and Jim McDougal and  
15 Madison, and I told him -- I was actually wrong. I  
16 told him no. I didn't recall.

17 Q Did Mr. Kennedy indicate to you that --  
18 whether Mr. Coleman had made any reference to the  
19 Clintons in connection with David Hale?

20 A Maybe it will help; this is what I  
21 remember. Bill called me and said is there any --  
22 and I think the reason I said no to him was he was

1 asking me did it come up in the campaign of any  
2 connection between Hale and McDougal and the  
3 Clintons.

4 And I thought he was asking me in reference  
5 to the campaign because Bill and others would always  
6 call me about issues that came up in the campaign.  
7 Now, that's when I said no. Actually I knew that  
8 Hale and McDougal had a connection but I had  
9 forgotten about it.

10 Then when I read it in the paper that  
11 Mr. Coleman had called Mr. Kennedy about Mr. Hale,  
12 the next time I talked to Bill, I said something like  
13 "now I understand why you were asking me about  
14 Mr. Hale, that Randy about been calling you." And he  
15 said "yeah, that's why I was calling you because I  
16 was getting these calls from Coleman."

17 So I don't think at the first time  
18 Mr. Kennedy was -- had mentioned Randy but he had  
19 asked about did I know of any connection between  
20 Hale, Madison, things of that sort, and I took it as  
21 a typical question that was kind of campaign related.

22 Q Do you recall when that conversation might

1 have occurred?

2 A It was sometime before the newspaper  
3 articles hit about Hale.

4 Q Would it roughly have been sometime in  
5 August, perhaps?

6 A Could have been late August, could have  
7 been early September. I just -- you know, Bill and I  
8 talked, especially after Vince died, almost on a  
9 daily basis, so it would have been hard to pinpoint.

10 Q Would it refresh your recollection at all  
11 if I indicated to you that we have phone records  
12 indicating you spoke to Mr. Kennedy on August 18 for  
13 10 minutes?

14 A No. There were a lot of issues after Vince  
15 died that Bill and I would talk about, and so -- and  
16 also, Bill was the point person on all appointments  
17 at the Justice Department with regard to doing their  
18 background checks, so Bill and I talked at that time  
19 a lot because I was under a lot of encouragement,  
20 let's say, to get the appointments moving and get the  
21 background checks done, and so I would be calling  
22 Kennedy, finding out where they were.

1 Q After you spoke with Mr. Kennedy, do you  
2 recall speaking with Mr. Lindsey about what  
3 Mr. Kennedy had just discussed with you?

4 A No. I could have, but I don't recall.

5 Q Did Mr. Kennedy indicate to you that he had  
6 discussed his communications with Mr. Coleman with  
7 anyone at the White House?

8 A No. No, I would be surprised if he did.  
9 When you're talking about my conversation with  
10 Mr. Kennedy was, I'm -- you know, now I know why you  
11 were calling me about David Hale, and I also told him  
12 at that point that I was surprised Randy hadn't  
13 called me about those issues. So I don't remember  
14 him saying "but I've talked to Bruce about it and got  
15 an answer one way or the other." I just don't know.  
16 I know that at some point, Bruce Lindsey became kind  
17 of the lead person at the White House on  
18 Whitewater/Madison issues, but I thought that was  
19 much later on.

20 Q The Committee has obtained a series of  
21 phone records indicating that you spoke to  
22 Mr. Coleman, at least some sort of contact, on seven

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1 occasions between 6-15-93 and 9-13-93.

2 A Uh-huh.

3 Q Do you have any recollection about what you  
4 spoke to Mr. Coleman about on those occasions?

5 A Yes. I don't think I talked to him eight  
6 times. I think he might have called me or I might  
7 have called him. I may have talked to Randy two or  
8 three times in that period, but I've seen the phone  
9 messages so I know --

10 Q Seven, actually.

11 A Yeah. Randy called me to say that there  
12 was an investigation going on and that he wanted me  
13 to look into it, he thought there was an abuse,  
14 but -- and it related to a bankruptcy and a lawyer in  
15 Little Rock named Dick Downing.

16 Q When you say investigation, who was  
17 bringing this investigation?

18 A The antitrust division of the Justice  
19 Department.

20 Q And how was Mr. Downing involved in this  
21 investigation?

22 A He was the subject, he was one of the



1 targets of the investigation.

2 Q What was the nature of the investigation?

3 MR. FISHMAN: Let me interpose a question  
4 of the Committee whether -- let me -- off the record  
5 for a second so I can ask Mr. Hubbell how this  
6 investigation proceeded and whether there's anything  
7 public or not public about it, because you may be  
8 going down a road that would not be an appropriate  
9 one to go down.

10 (Discussion off the record.)

11 MR. FISHMAN: Back on the record. I've had  
12 an opportunity to discuss the matter with Mr. Hubbell  
13 and with one small aspect of his discussions with  
14 another person in the Justice Department that he will  
15 describe, I don't think that the contours of his  
16 answer to your question would invade any  
17 investigative matters within the Department of  
18 Justice or grand jury matters, and so I'll withdraw  
19 my objection to the question.

20 MR. GIUFFRA: What was the pending  
21 question?

22 (The reporter read the record as requested.)

1 THE WITNESS: There was an investigation  
2 going on of a bankruptcy matter, an allegation that  
3 lawyers and others had conspired to avoid the  
4 legitimate bidding process in a bankruptcy matter.

5 Randy believed that there was a real abuse  
6 about to occur, that a lawyer, a certain lawyer in  
7 Little Rock that he represented was about to be  
8 indicted. I referred the matter to the head of the  
9 antitrust division to say I received this complaint,  
10 like I would any other.

11 Later on I got a report on it. I don't  
12 think I reported back to Mr. Coleman. Then later on,  
13 Mr. Coleman called me again to say it was still going  
14 on and he thought it was abuse and that I needed to  
15 look into it.

16 BY MR. GIUFFRA:

17 Q Did Mr. Coleman indicate to you the names  
18 of the persons who were involved or alleged to be  
19 involved in this antitrust conspiracy?

20 A Yes, yes, he did.

21 Q What were the names?

22 MR. FISHMAN: Well, again, perhaps we

1 could, because again I don't know whether the matter  
2 was a grand jury matter or not. Perhaps it would be  
3 safer if you were to ask whether the names of any  
4 people that were involved are any of the names  
5 involved with the scope of the Committee's  
6 investigation and that way --

7 MR. GIUFFRA: Well, I'm going to ask the  
8 question because I want to try to test his knowledge  
9 with regard to this and also learn more about this  
10 particular matter.

11 MR. FISHMAN: I understand. Because  
12 Mr. Hubbell does not know whether there were matters  
13 involving a grand jury investigation, you may be  
14 asking him to give an answer that would subject him  
15 to disclosing grand jury investigation -- grand jury  
16 information unknowingly and I don't think that that  
17 would be --

18 MR. GIUFFRA: If Mr. Coleman provided the  
19 information to him, it wouldn't be grand jury.

20 MR. FISHMAN: If he learned it from the  
21 antitrust section, he might have.

22 THE WITNESS: I didn't learn it from

1 antitrust.

2 MR. FISHMAN: That's fine.

3 BY MR. GIUFFRA:

4 Q Who did Mr. Coleman say was involved in  
5 this particular investigation?

6 A He mentioned a lawyer named Dick Downing.

7 Q Did he mention the names of any other  
8 lawyers?

9 A No. I was aware of the matter so I knew  
10 other people who were involved, but the one he  
11 mentioned was Dick Downing. And I wasn't aware of it  
12 because of anything at the Justice Department. I was  
13 aware of it because of Little Rock knowledge, not --

14 Q Based on your Little Rock knowledge, who  
15 else did you know was a possible target of this  
16 investigation?

17 A I didn't know who was the target of the  
18 investigation. I knew who was involved in the  
19 bankruptcy matter.

20 Q Who was involved in the bankruptcy matter?

21 A A lawyer named Skip Davidson, a man named  
22 Whisenhunt, a man named Vogel, and I think the entity

1 involved was an entity called Landscape &  
2 Associates. The best description I can give you is  
3 if you go out Highway 10, there's a piece of property  
4 where there's a Safeway store and right across the  
5 street from it is a Kroger store, and it involved  
6 where the Kroger store was, is now.

7 MR. KRAVITZ: You can stop by this weekend.

8 MR. GIUFFRA: That's just what I was  
9 looking forward to doing.

10 BY MR. GIUFFRA:

11 Q How did you learn about this particular  
12 antitrust investigation when you were back in Little  
13 Rock?

14 A I didn't learn about the antitrust  
15 investigation. I knew about the bankruptcy auction.

16 Q How did you learn about the bankruptcy  
17 matter?

18 A Because Mr. Whisenhunt, after firing his  
19 lawyer, Mr. Downing, and others, other lawyers he  
20 had, came to one of my partners and wanted him to  
21 represent him.

22 Q Who was the partner that he came to?

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1 A Mr. Charles Baker.

2 Q And who was Mr. Coleman representing in  
3 connection with this investigation?

4 A Mr. Downing, I believe.

5 Q Did you know Mr. Downing?

6 A I don't believe I've ever met Mr. Downing.  
7 I might have through Bar activities, but Mr. Coleman  
8 was not the only lawyer to call me about Mr. Downing,  
9 by the way.

10 Q Who were the names of the other lawyers who  
11 called you about Mr. Downing?

12 A The one I remember is another lawyer named  
13 Mr. Tom Overby, who I do know, who called me again to  
14 say similar to what Mr. Coleman said. So I don't  
15 know Randy was representing him. He may have been  
16 calling just as a friend.

17 Q Do you recall how long your conversations  
18 with Mr. Coleman were?

19 A Maybe three, four, five minutes.

20 Q Did you ever meet with Mr. Coleman in  
21 Washington, D.C. during the time when you were --  
22 between January --

1 A In a meeting between Randy Coleman and me?

2 Q Strike that. When was the last time you  
3 met with Randy Coleman face to face?

4 A Unless I saw him at a reception somewhere,  
5 I would say the last time I met him was in '92, I  
6 think. I can't tell you when the last time I saw  
7 Randy face to face was since -- I remember a case I  
8 had in '92 that Randy was representing some people,  
9 but that's been a while.

10 Q Let me ask you a question about your  
11 practice with regard to the returning of phone  
12 calls.

13 MR. KRAVITZ: You mean as Associate  
14 Attorney General?

15 MR. GIUFFRA: Let me ask the question and  
16 if we need to specify it, we will.

17 BY MR. GIUFFRA:

18 Q Are you someone who typically, prior to  
19 recent times -- someone who typically returned your  
20 phone calls that you got every day or would you let  
21 them stack up?

22 MR. KRAVITZ: Mr. Hubbell obviously can

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1 fend for himself, but I think it would be helpful for  
2 the record if that was broken -- he obviously has had  
3 very different positions, probably a different inflow  
4 of phone calls.

5 MR. GIUFFRA: Some people always return  
6 their phone calls.

7 BY MR. GIUFFRA:

8 Q During the period when you were Associate  
9 Attorney General, what was your standard practice  
10 with regard to the return of phone calls that you  
11 would receive each day?

12 A To the extent I had time to return phone  
13 calls, they would build up and my assistant would  
14 give me phone messages and I would try to return  
15 them, sometimes I wouldn't have an opportunity to  
16 return them until late at night and most of the time  
17 people weren't around, but I tried to always place a  
18 phone call back.

19 Q The same day that you received the phone  
20 call?

21 A I used to do that when I was in private  
22 practice. I can't say that I was able to do that

1 when I was Associate Attorney General.

2 Q Did you attempt to return phone calls,  
3 though, within several days?

4 A Yeah, unless it was -- you know, you got to  
5 a point where you weren't going to return something,  
6 I mean you had talked to the person five times and  
7 you were getting nowhere, and you might give it to  
8 somebody else.

9 Q And obviously certain people you would  
10 return their phone calls faster than others?

11 A Yes.

12 Q The A list, the B list, the C list and on  
13 and on?

14 A Well, you know, I really tried to return my  
15 phone calls but there was an A list, a B list, a C  
16 list, whatever other list.

17 MR. SGRO: Off the record.

18 (Discussion off the record.)

19 BY MR. GIUFFRA:

20 Q Do you recall when Mr. Coleman called,  
21 whether you promptly returned his phone calls or you  
22 don't have a recollection?

1 A No, I don't have any recollection.

2 MR. GIUFFRA: Why don't we take a break  
3 right here at 1:30 and we can all go grab a quick --  
4 do you want resume again at 2:00?

5 (Recess.)

6 (Whereupon, at 1:30 p.m., the deposition  
7 was recessed, to be reconvened at 2:25 p.m. this same  
8 day.)  
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## AFTERNOON SESSION (2:25 p.m.)

Whereupon,

WEBSTER L. HUBBELL

resumed the stand and, having been previously duly sworn, was examined and testified further as follows:

EXAMINATION (Continued)

BY MR. GIUFFRA:

Q Back on the record.

Mr. Hubbell, when you spoke to Mr. Kennedy the first time, I believe you testified that was before the whole Whitewater issue became public?

A Right.

Q And then you spoke to him a second time after it became public?

A Yes.

Q Okay.

A I'm sure I talked to him many other times.

Q But there was just one conversation --

A That related to Madison. Those two stick in my mind.

Q Was it two before or one before?

A One before.

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Q Just one before it became public.

A Let me make sure. I told you that I don't know whether we ever discussed the fact that Vince was preparing the Whitewater returns, so that could have been a separate one, but I don't remember.

Q Now, did Mr. Kennedy during this first conversation say anything to you about the fact that records at Capital Management had been seized pursuant to a search warrant?

A No.

Q Did there ever come a time when you learned that a search warrant had been executed for certain records at Capital Management?

A At some point I found out or heard that there had been a subpoena and a search warrant issued around the time of Vince's death. I can't tell you when. I either heard it or read it in the paper.

Q When you spoke to Mr. Kennedy, did he mention that there was -- the allegations against Mr. Hale had anything to do with Jim Guy Tucker?

A I don't recall one way or the other. I don't think so. My recollection of my discussion

1 with Mr. Kennedy was that it was more like now I know  
2 why Randy was calling you. I mean, I see that Randy  
3 called you. I'm surprised Randy didn't try to reach  
4 me, because he had been calling me about the other  
5 matter. And he said well, now you know why I was  
6 asking you about Hale and Madison.

7 Q So there's two conversations prior to the  
8 time this becomes public with Mr. Kennedy?

9 A No, one.

10 Q The first conversation all he does is ask  
11 you about Hale and Madison and doesn't tell you why  
12 he's calling?

13 A Right. He says in the context of -- I  
14 think it was in the context of the campaign, did  
15 anything -- do you recall anything or any connection  
16 between Hale and Madison.

17 Q And that is all you can recall about the  
18 conversation, he doesn't say why he wants the  
19 information?

20 A I recall that he didn't tell me why and I  
21 didn't ask him why.

22 Q Did you ever ask him later why he didn't

1 tell you what it was about?

2 A No, because I read in the paper why he  
3 asked me. I mean we obviously did talk about what it  
4 was about because I said I see Randy called you, I  
5 read it in the paper, and he said yeah, that's why I  
6 asked you about Hale and Madison. If you know Bill,  
7 he's not real loquacious. He'll ask you the question  
8 he needs to know and you give him his answer and  
9 that's about it.

10 Q Did there ever come a time when you  
11 discussed anything having to do with David Hale with  
12 Mrs. Clinton?

13 A David Hale?

14 Q Yes.

15 A No.

16 Q How about Capital Management?

17 A No, I don't -- I put them in the same  
18 ballpark.

19 Q Have you ever spoken to Marcia Scott --  
20 strike that.

21 Who is Marcia Scott?

22 A Marcia Scott is -- I don't know her exact

1 title now. She works in the White House as either an  
2 assistant to the President or a deputy to the  
3 President. I think she's an assistant to the  
4 President. She was head of communications or  
5 correspondence, White House correspondence, excuse  
6 me, at one time. I've known Marcia for a long time.

7 Q Did you ever speak to Marcia Scott about  
8 David Hale?

9 A Only in the context after it all hit the  
10 paper.

11 Q Do you recall what you said to her about  
12 David Hale?

13 A About David himself?

14 Q Yes.

15 A No, no. It would be more in the general "I  
16 can't believe Whitewater is coming back up," that  
17 kind of conversation.

18 Q Did you ever inform her of the contacts  
19 between Kennedy and Coleman?

20 A It was in the paper, so we might have  
21 discussed it but only then.

22 Q What, if any, action did you take in

1 response to the conversation that you had with  
2 Mr. Coleman?

3 A I advised the Assistant Attorney General  
4 for antitrust that I had received a complaint about a  
5 case in the Arkansas area, that it was being -- you  
6 know, that it was an abuse and that's all I said.

7 Q Who was the Assistant Attorney General at  
8 that time?

9 A Ann Bingamann.

10 Q Do you recall when you advised  
11 Ms. Bingamann of this abuse?

12 A Alleged abuse.

13 Q Alleged abuse.

14 A Around the time that I would have  
15 ultimately made contact with Randy. I think the  
16 calls were in like June of 1993.

17 Q So it's your testimony that you think you  
18 spoke to Ms. Bingamann about this matter in late June  
19 of 1993?

20 A No, whenever the phone calls were from  
21 Randy, and I think Ann was confirmed sometime in  
22 June.

1 Q So shortly after she got into office?

2 A Shortly after she got into office, her  
3 notes -- it could have been July, excuse me. She was  
4 just showing me when the phone calls occurred and it  
5 looks like they were early July, which is about the  
6 time Ann took office.

7 Q Now, did you prepare any sort of written  
8 document reflecting your conversations with  
9 Mr. Coleman?

10 A No.

11 Q Didn't send a memo to Ms. Bingamann?

12 A No.

13 Q Did you advise Mr. Coleman to contact  
14 Ms. Bingamann?

15 A I don't think so.

16 Q Do you know whether Ms. Bingamann contacted  
17 Mr. Coleman?

18 A I don't believe so.

19 Q Do you know whether Ms. Bingamann ever took  
20 any action in response to the comment you made to her  
21 about the alleged abuses regarding this antitrust  
22 matter?

1 A I know that she attempted to locate and see  
2 if there was such a case pending.

3 Q Did she -- strike that.

4 Did you have this conversation by telephone  
5 or in her office or did she come to your office?

6 A Ms. Bingamann would come to my office on a  
7 regular basis for staff -- what I considered to be --  
8 "staff" is not the right word. We would have a  
9 regular meeting once a week of all the Assistant  
10 Attorney Generals that reported directly to me, and  
11 in addition, on specific cases which Ann wanted my  
12 guidance on, she would meet with me. And it was at  
13 one of those meetings as she was leaving, I just made  
14 a comment that I had received this complaint.

15 Q Now, at these meetings, pending matters  
16 would be discussed with the other Assistant Attorney  
17 Generals?

18 A In a very general sense, you know.

19 Q Was there anyone who kept notes of these  
20 meetings?

21 A No.

22 Q Did you keep -- you didn't keep any notes

1 of the meetings?

2 A I don't keep notes.

3 Q You don't keep notes. And it's your  
4 testimony that you did not discuss the matter in  
5 front of anyone other than Ms. Bingamann?

6 A I couldn't tell you whether I did or not.  
7 She would usually -- when she would come to a matter  
8 that was specific, she might have brought three or  
9 four lawyers with her, so I can't recall who was  
10 there.

11 Q You can't recall whether it happened during  
12 the meeting with other Attorney Generals or in just a  
13 meeting with Ms. Bingamann and maybe some members of  
14 her staff?

15 A Right.

16 Q Now, did Ms. Bingamann report back to you  
17 as to what happened?

18 A She reported back to me. She didn't report  
19 on any specific action.

20 Q What did she advise you?

21 A She advised me that she couldn't find the  
22 case that I had talked to her about.

1 Q Do you know whether such a case was ever  
2 being considered?

3 MR. FISHMAN: I'm not sure he can answer  
4 that question. I'm sorry, Mr. Giuffra. You're  
5 asking whether the department was considering  
6 bringing an antitrust action in a particular matter.  
7 That's not within the scope of the inquiry. I  
8 understand why you want to ask the question.

9 MR. GIUFFRA: Mr. Hubbell just testified  
10 that the Assistant Attorney General for antitrust  
11 told him that no such case existed.

12 MR. KRAVITZ: That's not what he  
13 testified.

14 MS. SHORES: That's not what he said.

15 THE WITNESS: She said she couldn't find  
16 it, if it did.

17 BY MR. GIUFFRA:

18 Q Did she advise you what sort of inquiry she  
19 had made to ascertain whether such case existed?

20 A No, no, nor did I inquire.

21 Q Did you report back to Mr. Coleman that the  
22 Assistant Attorney General for the antitrust division



1 advised you that there was no such case?

2 A No, I did not.

3 Q Why did you not report back to Mr. Coleman  
4 that no such case existed?

5 MR. KRAVITZ: Objection. I think the  
6 question -- the question is -- has implicit in it a  
7 misstatement of Mr. Hubbell's testimony.

8 MR. GIUFFRA: Could you read the question  
9 back?

10 (The reporter read the record as requested.)

11 MR. KRAVITZ: I have now pointed out to you  
12 a couple of times that Mr. Hubbell has not testified  
13 as that question indicates. His testimony is that  
14 Ms. Bingamann told him that she could not find the  
15 case.

16 MR. GIUFFRA: I will rephrase the  
17 question.

18 BY MR. GIUFFRA:

19 Q Why did you not report back to Mr. Coleman  
20 that Ms. Bingamann had advised you that she could not  
21 find the antitrust matter to which Mr. Coleman  
22 referred?

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1 A The reason -- I would like to think there  
2 was a huge thought process behind this but I can't  
3 honestly say that's true, but more than likely all I  
4 wanted to do was report to the person that would be  
5 reporting to me that I had received a report of an  
6 abuse, a prosecutorial abuse, in one of her  
7 divisions. I didn't ask her one way or the other to  
8 take any action, nor did I feel like that it would be  
9 appropriate for me to report back to Mr. Coleman,  
10 without Ms. Bingamann, the nature or the status of  
11 the matter.

12 Q What was the nature of the prosecutorial  
13 abuse that Mr. Coleman had advised you of?

14 A He had said something to the effect -- I  
15 mean really I don't -- I remember he had said  
16 something about that whoever was in the antitrust  
17 division was a real jerk and used some profanity,  
18 okay, and had said that he was pursuing a trivial  
19 case.

20 Q Was this person in the antitrust division  
21 someone who was located in Washington, D.C.?

22 A I have no idea.

1 Q Was it -- strike that.

2 Now, your telephone records indicate that  
3 you had some -- actually four conversations with  
4 Mr. Coleman in September of 1993, one conversation on  
5 September 1, another one on September 9, another one  
6 September 13 and another one on September 15.

7 MR. KRAVITZ: Are you referring to any  
8 documents you want to identify for the record?

9 MR. GIUFFRA: I'm just going to ask some  
10 questions.

11 MR. KRAVITZ: Is the answer no?

12 MR. GIUFFRA: I'm just going to ask him  
13 some questions. We have records indicating  
14 contacts. They may not necessarily be conversations  
15 but contacts with Mr. Coleman on those four dates.

16 MR. KRAVITZ: Do you want to rephrase a  
17 question or at least a part of it in which you said  
18 the records indicate that he had conversations with  
19 Mr. Coleman?

20 MR. GIUFFRA: I'll restate the question.

21 BY MR. GIUFFRA:

22 Q We have records indicating contacts between

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1 Mr. Coleman of some sort and yourself on September 1,  
2 9, 13 and 15, 1993. Do you have any recollection as  
3 to what those conversations were about?

4 MR. KRAVITZ: Well, I'm going to object. I  
5 mean for whatever reason Mr. Giuffra doesn't want to  
6 state what the documents are to which he refers, but  
7 I mean, I think to be fair to the witness, we ought  
8 to indicate that there are message slips on those  
9 four days which indicate that Mr. Hubbell received  
10 messages that he was called by Mr. Coleman, so I  
11 think it's really unfair to ask the question about  
12 conversations on those days when there's no evidence  
13 that there were any.

14 MR. GIUFFRA: Mr. Kravitz, Mr. Hubbell is  
15 represented by counsel, so the question --

16 MS. SHORES: Then I'll just restate his  
17 objection.

18 MR. GIUFFRA: Fine.

19 MR. KRAVITZ: You can avoid the objections  
20 by asking appropriate questions.

21 THE WITNESS: I don't have any recollection  
22 of talking to Mr. Coleman about -- in September. I

1 think I told you before that at some point, Randy  
2 called me back and said the matter was still going  
3 on, that being the Dick Downing matter, and then I  
4 remembered that Randy was still trying to call me and  
5 I remember that I didn't call him back, but I also  
6 know that from other information, throughout all this  
7 process, that I did attempt to make phone calls to  
8 Randy's office on two or three occasions and never  
9 made contact.

10 BY MR. GIUFFRA:

11 Q Just so the record is clear, there were two  
12 conversations with Mr. Coleman in the June/July '93  
13 period?

14 A No, that's not what I said. I said I  
15 remember in connection with the Dick Downing matter  
16 that there was -- we traded phone calls like you tend  
17 to do, call it telephone tag or ping-pong. And at  
18 some point Randy told me about this matter, as did  
19 Tom Overby and I think another lawyer, but I don't  
20 remember who that lawyer was.

21 At some point, I was -- at that point I  
22 gave the matter to Ms. Bingamann and she reported

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1 back to me.

2 At some point after that, and I can't tell  
3 you whether that was in July, August or September, I  
4 had another conversation with Randy that was very  
5 short where he told me it was still going on.

6 Q And did you advise him that Ms. Bingamann  
7 had told you that she could not locate this  
8 particular matter?

9 A No, I did not.

10 Q Do you recall anything more about your  
11 conversation with Mr. Coleman?

12 A I would have probably asked him how he was  
13 doing and thanked him for passing that on and I might  
14 have said something to the effect that I would look  
15 into it.

16 Q Why would you have not advised him of what  
17 Ms. Bingamann had told you?

18 MS. SHORES: I think he already testified  
19 about that.

20 MR. GIUFFRA: I don't recall the testimony.

21 MS. SHORES: I think he said he didn't  
22 think it would be appropriate to do so.

1 BY MR. GIUFFRA:

2 Q Is that your testimony, sir?

3 A Yeah. I mean it wasn't -- it just wasn't a  
4 big deal. I had a lawyer that -- it happened I guess  
5 probably 15 times a day that somebody was complaining  
6 about something at the Justice Department. I would  
7 usually try to pass that information on to the  
8 appropriate person that I had received that  
9 complaint. And then unless I was asked specifically  
10 to get back with that person, that would be the  
11 extent of what it was.

12 I didn't want to disclose -- I mean I  
13 didn't have anything to disclose, to be honest with  
14 you. I would like to say it wouldn't be appropriate  
15 but I didn't have any information to disclose one way  
16 or the other, other than Ann didn't know anything  
17 about it.

18 Q Mr. Hubbell, do you know a man named Jack  
19 Palladino?

20 A Yes. I know of him. I don't believe I've  
21 ever met Mr. Palladino. I may have, but I don't  
22 know. But I know of him.

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1 Q What do you know of Mr. Palladino?

2 A That he is an attorney that also does  
3 private investigative services and he's located on  
4 the West Coast.

5 Q Have you ever spoken to Mr. Palladino?

6 A It's possible that I did during the  
7 campaign. It is possible on one occasion I did once  
8 I came to Washington, but I don't know. I don't  
9 remember whether I did or not.

10 Q Did Mr. Palladino perform any function for  
11 the Clinton Presidential campaign?

12 A Yes.

13 Q What was the function that Mr. Palladino  
14 performed for the Clinton Presidential campaign?

15 A In general terms, my understanding is that  
16 he did some legal and investigative work with regard  
17 to certain issues that came up during the campaign.

18 Q And what were the issues of which  
19 Mr. Palladino performed legal and investigative  
20 work?

21 MR. KRAVITZ: Objection. You know, I have  
22 a reason to believe, as I think Mr. Giuffra does,

1 that the answer to this question is likely to elicit  
2 information that's outside the scope of the  
3 resolution. If you want to ask a more pointed  
4 question as to whether Mr. Palladino provided any  
5 services relevant to any of the subjects in the  
6 resolution, I will withdraw my objection.

7 MR. GIUFFRA: I'm not going to withdraw the  
8 objection -- the question stands.

9 MR. KRAVITZ: So does the objection.

10 MR. GIUFFRA: So the question stands.

11 MR. KRAVITZ: Well, the objection is that's  
12 a question that calls for information that is likely  
13 to be outside the scope of the resolution.

14 BY MR. GIUFFRA:

15 Q Mr. Hubbell, if you feel you don't want to  
16 answer the question, I'll contact the chairman and  
17 get a ruling on this.

18 MS. SHORES: Well --

19 MR. GIUFFRA: I'm asking him what services  
20 in specific Mr. Palladino performed. I'm not even --  
21 that is -- that is a foundational question. I'm not  
22 asking him to go into detail about it but it's just a

1 foundational question and you know I think that -- in  
2 all likelihood, I suspect the Chairman will deem that  
3 to be relevant.

4 (Witness conferred with counsel.)

5 THE WITNESS: I can answer what I know he  
6 did. I know that he issued a report concerning the  
7 genealogy of the President, then governor. I know  
8 that he did some investigative work with regard to  
9 certain allegations by certain individuals that  
10 alleged that they had some sort of sexual  
11 relationship with the then-governor, now President.

12 What else he did for the campaign, I know  
13 he issued some additional reports that I have seen in  
14 the files. I haven't read the reports so I couldn't  
15 tell you.

16 BY MR. GIUFFRA:

17 Q Are these campaign files, these reports?

18 A These are personal -- what I would label  
19 personal files of the Clintons. They could be  
20 related to the campaign. I'm not in a position now  
21 to tell you who actually is the owner of those files.

22 Q Did Mr. Palladino, as far as you know,



1 perform any work having anything to do with  
2 Whitewater?

3 A I don't know one way or the other.

4 Q And again with regard to Mr. Palladino, you  
5 have no recollection as to why you might have called  
6 him in the period during which you were Associate  
7 Attorney General?

8 A There are two reasons why I would have  
9 called Mr. Palladino. I don't remember whether I did  
10 or didn't.

11 Q What were the reasons you would have called  
12 Mr. Palladino?

13 A One was that a person was recommended to me  
14 for a position in my office and she had worked with  
15 Mr. Palladino during the campaign and it was  
16 recommended to me that I contact Mr. Palladino for a  
17 reference.

18 Q What was the name of that person?

19 A Her name was Loretta Lynch. The other  
20 reason was an issue came up regarding the President's  
21 genealogy in June of 1993, and Mr. Palladino had done  
22 a report, and it is possible that I called him about

1 that.

2 There is a third reason, and that is that  
3 when I was asked to ultimately get the files that  
4 were in the basement of my house to the Clintons'  
5 personal counsel, I may have been asked by someone to  
6 contact Mr. Palladino to ask him to do the same  
7 thing. I don't remember whether I was or not, but  
8 it's a possibility.

9 Q Who is Loretta Lynch?

10 A Loretta Lynch is an attorney. She worked  
11 in the campaign. She worked closely with Betsey  
12 Wright and Jim Lyons. She applied for a job with me  
13 and at the Justice Department. She's practicing now  
14 in California, I believe.

15 Q Did you at any time hire Ms. Lynch?

16 A No.

17 Q Did she ever have any position in the  
18 Administration?

19 A In the Administration, not while I was in  
20 the Administration, no.

21 Q Do you know whether she had one after you  
22 left the Administration?

1 A I don't believe she did, but I can't say  
2 for sure she didn't.

3 Q Do you know whether Ms. Lynch worked on  
4 anything having to do with Whitewater Development  
5 Corporation during the campaign?

6 A She did.

7 Q What is your understanding of the role that  
8 Ms. Lynch played with regard to Whitewater  
9 Development Corporation during the campaign?

10 A She assisted Mr. Lyons and Ms. Wright to  
11 assemble documents. She helped prepare answers to  
12 press inquiries. She consulted with me, was part of  
13 the group that interviewed me and others about  
14 Madison, as well as other issues.

15 Q Mr. Hubbell, did you play any role in the  
16 selection of a U.S. Attorney for the Eastern District  
17 of Arkansas?

18 A Once the selection was made -- the  
19 recommendation by Senator Bumpers was made and the  
20 President advised the Attorney General that he was  
21 recommending someone, then people who worked with me  
22 would have worked on doing a background check on

1 Ms. Casey and would have ultimately prepared the  
2 documents that went to the Attorney General that  
3 ultimately went back to the President.

4 Q Did you have any input on the process that  
5 occurred with regard to her selection prior -- strike  
6 that.

7 Did you consult with Senator Bumpers with  
8 respect to the nomination of Ms. Casey?

9 A No, I did not.

10 Q Was Ms. Casey -- strike that.

11 Do you know whether Senator Bumpers  
12 consulted with either the President or Mrs. Clinton  
13 in connection with the appointment of Paula Casey?

14 A I'm sure he told somebody at the White  
15 House that he was recommending Ms. Casey, but who I  
16 don't know. It kind of came -- they would normally  
17 come from the Senator to the White House. After the  
18 White House had done some work, they would come back  
19 to the Justice Department. And that's when we would  
20 get involved. I did have some involvement in passing  
21 on recommendations to people in the White House of  
22 other people for that position.

1 Q Prior to becoming a member of the Justice  
2 Department, what was the nature of your relationship,  
3 if any, with Paula Casey?

4 A I don't believe I ever met Ms. Casey. I  
5 might have met her at a reception, but I don't  
6 believe so.

7 Q Have you ever met Ms. Casey?

8 A Yes.

9 Q When did you first meet Ms. Casey?

10 A My best recollection is it was late  
11 December/early January of 1994 when she attended a  
12 U.S. Attorneys conference here in Washington.

13 Q 1994?

14 A January of '94, yes.

15 MR. FISHMAN: I think for the record he  
16 meant December of '93 or January of '94.

17 THE WITNESS: Right. Whenever the U.S.  
18 Attorneys conference was, that winter.

19 BY MR. GIUFFRA:

20 Q During the period July 1993 through  
21 November 1993, do you recall speaking with Ms. Casey  
22 about any matter?

1 A I don't believe I did.

2 Q Do you recall any conversations that you  
3 had -- strike that.

4 Do you recall ever speaking -- strike  
5 that.

6 Do you recall speaking with Mack McLarty  
7 during 1993 about David Hale?

8 A Mack McLarty?

9 Q Yes.

10 A Not that I recall.

11 Q During 1993, do you recall any  
12 conversations that you had with Jim Lyons about David  
13 Hale?

14 A About David Hale?

15 Q Yes.

16 A I don't think so, not about David, no. I  
17 might -- it might have been after the newspaper  
18 articles hit, I might have talked to Jim about it,  
19 but I -- only in the context of a more overall  
20 discussion about Madison or Whitewater.

21 Q Do you know Michael Johnson, who is the  
22 First Assistant U.S. Attorney, Eastern District of

1 Arkansas?  
2 A Michael Johnson?  
3 Q Yes.  
4 A No.  
5 Q Do you know Fletcher Jackson?  
6 A Bear Jackson, yeah.  
7 Q How do you know Fletcher Jackson?  
8 A His nickname is Bear.  
9 MS. SHORES: Obviously named after Bear  
10 Bryant.  
11 MR. KRAVITZ: This is an Alabamian talking  
12 here.  
13 THE WITNESS: Bear is not as big as you  
14 would think. He's real small.  
15 I've known Fletcher since I started  
16 practicing. I think he's one of the few people who  
17 have been at that office for years, and so on  
18 occasion when I would have legal contact with the  
19 U.S. Attorney's Office, I might be in touch with  
20 Fletcher Jackson. So I would know him, we would go  
21 to bar -- I would see him at a Bar association  
22 meeting and hear people refer to him as Bear.

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1 BY MR. GIUFFRA:  
2 Q And have you ever spoken to Mr. Jackson  
3 about David Hale?  
4 A About David Hale, no.  
5 Q How about Whitewater Development  
6 Corporation?  
7 A No.  
8 Q Madison Guaranty?  
9 A No.  
10 MR. KRAVITZ: Off the record for one  
11 second.  
12 (Discussion off the record.)  
13 BY MR. GIUFFRA:  
14 Q Mr. Hubbell, during 1993 did you ever have  
15 any discussions with Bruce Lindsey about David Hale?  
16 A I'd be surprised if I didn't when all the  
17 newspaper articles hit, because at some point I heard  
18 that Bruce was in charge of all Madison/Whitewater  
19 matters, but any specific conversation, no. I mean  
20 it might have been in the context of a more general  
21 discussion.  
22 Q Do you recall any general discussions that

1 you might have had about Whitewater with Bruce  
2 Lindsey after the newspaper articles hit?

3 A Every now and then, I would -- people who  
4 were involved in answering inquiries regarding  
5 Madison would ask me about issues that might have  
6 come up during the campaign, did this come up during  
7 the campaign, do you recall this issue, and I --  
8 those are the type conversations that might occur.  
9 You know, like -- I'm trying to think of whether the  
10 issue would come up whether Hillary had any --  
11 whether she received any fees from Madison when she  
12 was representing Madison or whether I knew whether  
13 the retainer -- part of the retainer was paid back,  
14 those type of issues I would be asked about.

15 Q Do you know a man named Erskine Bowles?

16 A Yes.

17 Q How do you know Erskine Bowles?

18 A I met him at the economic conference after  
19 the President was elected, and he became the head of  
20 the SBA, and I believe his position is now Deputy  
21 Chief of Staff.

22 Q During 1993, do you recall any

1 communications you might have had with Mr. Bowles?

2 A '93?

3 Q Yes.

4 A There was an issue that came up regarding  
5 lending and the SBA as involved with the overall  
6 issues of civil rights and lending -- not -- I'm  
7 trying to come up with the right word for this. I'm  
8 trying -- the issue was lenders making loans to  
9 minorities and making sure that you weren't  
10 red-lining or targeting, and Erskine was part of a  
11 group, including the comptroller and others,  
12 representing the SBA in those issues.

13 It seems like there was another issue  
14 involving the SBA, it may have been with the civil  
15 division but I don't know, and occasionally I might  
16 see Erskine at a social event. Erskine is an avid  
17 golfer, as I am, and we would talk about playing golf  
18 together. We never got a chance to.

19 Q Did you ever discuss anything having to do  
20 with either David Hale or Capital Management with  
21 Mr. Bowles?

22 A No.



1 Q Do you have any knowledge of a request by  
2 the White House to obtain documents from the SBA  
3 relating to David Hale or Capital Management?

4 A SBA? No, I do not.

5 Q During the period in which you were with  
6 the Justice Department, let's focus on 1993, did you  
7 have any contacts with attending meetings at the RTC  
8 professional liabilities section?

9 A Yes.

10 Q Could you describe what you recall about  
11 those contacts?

12 A I was asked to come to a breakfast meeting  
13 of the lawyers in the professional liabilities  
14 section after I was sworn in as Associate Attorney  
15 General to talk about common issues that they might  
16 have with the Justice Department and to renew some  
17 acquaintances with some people I had worked with.

18 Q Who asked you to attend that breakfast?

19 A April Breslaw may have, either that or Jack  
20 Smith. I can't tell you whether it was Jack -- I  
21 think it was April who invited me.

22 Q Do you recall when Ms. Breslaw invited you

1 to attend this breakfast?

2 A I think the breakfast was in June, early  
3 July, so it was sometime prior to that.

4 Q Do you recall anything about what was  
5 discussed --

6 A It's on my calendar, I know.

7 Q Do you recall anything about what was  
8 discussed at this breakfast?

9 A It was mainly dealing with issues involving  
10 cooperation between the civil division and the RTC  
11 professional liabilities section, the civil division  
12 wanting to take on more of the professional liability  
13 litigation as opposed to private counsel and things  
14 of that sort. It was, you know, an hour meeting. We  
15 all had doughnuts and coffee.

16 Q Do you recall any other meetings with  
17 members of the RTC professional liabilities section  
18 during 1993?

19 A No. I was interviewed by Jack Smith and  
20 one other lawyer sometime late in 1993.

21 Q What was the nature of that interview?

22 A It had to do with billing issues at the

1 Rose Law Firm.

2 Q Do you recall when that was?

3 A I think it was November or December of  
4 '93. Actually, excuse me, billing issues is the  
5 wrong thing. At that time it was about a conflict,  
6 it was conflicts. The issue had arisen about whether  
7 the Rose firm had a conflict in taking on  
8 representation of Madison, and the RTC interviewed me  
9 in connection with conflicts.

10 Q Following that meeting with the RTC, did  
11 you contact anyone?

12 MR. KRAVITZ: Which one?

13 MR. GIUFFRA: The meeting he just referred  
14 to.

15 MR. KRAVITZ: The Jack Smith meeting?

16 MS. SHORES: The interview?

17 BY MR. GIUFFRA:

18 Q Yes.

19 A No, I didn't. On the day the report was  
20 issued, Jack called me and faxed to me a copy of the  
21 report.

22 Q And when was that?

1 A I think Jack called me -- excuse me. Jack  
2 called me with some follow-up questions and then the  
3 day the report was issued. I think it was February  
4 of '94.

5 Q Did you ever discuss with Mrs. Clinton the  
6 fact that Mr. Smith had contacted you about possible  
7 conflicts of the Rose Law Firm?

8 A Mrs. Clinton? Not that I recall.

9 Q Did you ever discuss with Mr. Kennedy that  
10 you had been contacted by the RTC about possible  
11 conflicts at the Rose Law Firm?

12 A I don't know whether I did or didn't. I  
13 might have, but I don't know.

14 Q Do you recall -- going back to the meeting,  
15 the breakfast meeting sometime in the summer of 1993,  
16 do you recall discussing subpoenas during the course  
17 of that meeting?

18 A Subpoenas?

19 Q Yes.

20 A No. If you have some specific, but I  
21 don't -- like what?

22 MS. SHORES: Specific things or just

1 subpoenas generally?

2 BY MR. GIUFFRA:

3 Q Just subpoenas generally.

4 A No.

5 Q Did you discuss anything having to do with  
6 the handling of criminal referrals during that  
7 meeting?

8 A Not that I recall, no. That wouldn't have  
9 been in my jurisdiction, anyway.

10 Q Who at the Department of Justice had  
11 jurisdiction over the handling of criminal referrals  
12 at that time?

13 A Criminal referrals to which division?

14 Q From the RTC.

15 A I would assume the criminal division.

16 Q Do you know a man named Allen Carver?

17 A No.

18 Q Did you discuss with anyone at the  
19 Department of Justice the fact that you had gone to  
20 this breakfast meeting at the RTC?

21 A I probably would have discussed it with  
22 Frank Hunger, head of the civil division, and I may

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1 have talked to -- somebody on my staff may have known  
2 because. They may have tried to give me some  
3 background material prior to it, but I don't remember  
4 any.

5 Q Mr. Hubbell, do you know a man named Dan  
6 Lassiter?

7 A Yes.

8 Q Who is Dan Lassiter?

9 A Mr. Lassiter was -- he lived in Arkansas.  
10 He owned a bunch of horses and was a big horse  
11 racer. He got into the securities and bond business,  
12 had a bond House called Lassiter & Company,  
13 ultimately was charged, I believe, with either  
14 possession or selling of drugs and was found guilty.  
15 And after that, after he came back, he I think still  
16 lives in Arkansas.

17 Q Have you ever had any contact with  
18 Mr. Lassiter?

19 A Personally?

20 Q Yes.

21 A I probably have met Mr. Lassiter on a  
22 social occasion back in the late '70s or early '80s,

1 but no business or personal contact -- I mean that  
2 way.

3 Q Do you know whether Mr. Lassiter was ever a  
4 client of the Rose Law Firm?

5 A To my knowledge, he was not. I've been  
6 told otherwise but I don't believe he was, at least  
7 while I was there. It gets gray when you're talking  
8 about bond issues. Him personally I know not, but it  
9 gets gray when it comes to bond issues. If you're a  
10 bond counsel on an issue, who you're actually counsel  
11 for, Lassiter & Company may have been one of the  
12 underwriters of some bond issues the bond people may  
13 have worked on. I just don't know.

14 Q But you were a litigation lawyer?

15 A Right.

16 Q Did you ever perform any work for something  
17 called the Arkansas Development Finance Authority?

18 A ADFA?

19 Q Yes.

20 A I don't believe -- I did -- litigation,  
21 no. I think in connection with one bond issue, I may  
22 have issued some corporate -- a corporate opinion to

1 ADFA as counsel to the corporation, not to the ADFA.

2 Q Do you remember the corporation?

3 A POM, but I don't think we ever represented  
4 them in litigation. I don't know that they ever were  
5 in litigation.

6 Q What was the connection between POM and  
7 ADFA?

8 A At one point, POM got a bond issue through  
9 ADFA to make an addition to their building in  
10 Russellville, Arkansas and to buy some additional  
11 equipment.

12 Q And POM stands for Park-On-Meter?

13 A Park-O-Meter.

14 Q Park-O-Meter, excuse me.

15 What was your connection to POM?

16 MR. KRAVITZ: Objection. Can you tell me  
17 what this has to do with the resolution?

18 MR. GIUFFRA: Excuse me?

19 MR. KRAVITZ: Can you tell me what this has  
20 to do with Senate Resolution 120?

21 MR. GIUFFRA: It relates to the matter  
22 of --

1 MR. KRAVITZ: Bond underwriting contracts  
2 between Lassiter & Company and the ADFA?

3 MR. GIUFFRA: That's one possible -- I  
4 don't know enough about POM yet. I'm trying to  
5 elicit information.

6 MR. KRAVITZ: Well, why don't you tell us  
7 what you think -- how you think this comes within  
8 Senate Resolution 120.

9 MR. GIUFFRA: I'm trying to ascertain some  
10 basic facts about POM which had a bond  
11 underwriting -- which received the proceeds from that  
12 was done by ADFA.

13 MR. KRAVITZ: That's unpersuasive. If you  
14 want to ask him whether he thinks that this had  
15 anything to do with the bond underwriting contract  
16 between Lassiter & Company and ADFA, I won't object;  
17 otherwise, you may have to call the chairman.

18 BY MR. GIUFFRA:

19 Q Mr. Hubbell, your father-in-law was the  
20 President of POM; is that correct?

21 A No, my brother-in-law was.

22 Q Your brother-in-law was. Mr. Hubbell, Seth

1 Ward is your father-in-law; correct?

2 A He is my father-in-law, I think at this  
3 point he is.

4 (Laughter.)

5 Q Did Mr. Ward have any connection to POM?

6 MR. KRAVITZ: Objection.

7 THE WITNESS: To POM?

8 MR. KRAVITZ: Objection.

9 THE WITNESS: Yes.

10 MR. KRAVITZ: Objection. Bob, if you want  
11 to go off the record and maybe tell me outside why  
12 you think this is relevant, I'm happy to listen to  
13 it.

14 MR. GIUFFRA: Off the record.

15 MR. KRAVITZ: Absent that, this has no  
16 apparent relationship to anything in our resolution.

17 (Discussion off the record.)

18 BY MR. GIUFFRA:

19 Q Back on the record.

20 Mr. Hubbell, do you have any knowledge of a  
21 bond issue involving Arkansas Police Radio Network?

22 A I've read articles about it, but I have no



1 personal knowledge about it.

2 Q Have you ever discussed Dan Lassiter with  
3 President Clinton?

4 A Dan Lassiter?

5 Q Yes.

6 MS. SHORES: While he was President?

7 MR. GIUFFRA: At any time.

8 THE WITNESS: I had some conversations a  
9 long time ago about it when it involved his brother  
10 that dealt with more about his brother than Dan  
11 Lassiter, and I really don't remember much about  
12 them, other than how upset he was.

13 BY MR. GIUFFRA:

14 Q What was the connection between Dan  
15 Lassiter and the President's brother?

16 A Mr. Lassiter was alleged to be one of those  
17 people who supplied his brother with illegal drugs.

18 Q Did the President indicate to you in any  
19 way that Mr. Lassiter had helped pay off any sort of  
20 debts that Roger Clinton had had?

21 A No, I never heard that.

22 Q Do you recall anything more about what

1 President Clinton said about the connection between  
2 Dan Lassiter and his brother Roger?

3 A No, we weren't talking about the  
4 connection. We were talking about personal family  
5 grief.

6 Q Do you know a woman named Carolyn Huber?

7 A Yes.

8 Q Who is Carolyn Huber?

9 A Carolyn Huber's position now is I think in  
10 the visitors office at the White House. Prior to  
11 that she was the office manager at the Rose Law  
12 Firm. Prior to that she was the -- I don't know what  
13 the exact title was at the governor's mansion. It's  
14 kind of the person in charge of the mansion. Prior  
15 to that, she was the assistant office manager at the  
16 Rose Law Firm and prior to that she was a secretary  
17 at the Rose Law Firm.

18 Q Have you ever discussed anything having to  
19 do with Whitewater/Madison with Ms. Huber?

20 A Discussed anything to do with  
21 Whitewater/Madison with Ms. Huber? At some point, I  
22 think the only thing I ever -- at some point she gave

1 me some files, and she may have said these go with  
2 the Whitewater files.

3 Q Do you recall when Ms. Huber gave you these  
4 files?

5 A Sometime in January of '93.

6 Q Was this before you joined the  
7 Administration?

8 A Yes.

9 Q And do you recall approximately how many  
10 files Ms. Huber gave you?

11 A No. I recall that they were a metal box.  
12 It was a metal box that you -- like this high  
13 (indicating).

14 Q About 6 inches?

15 A I'd say 6 inches high and about three  
16 drawers wide, and that's what she gave me.

17 Q Did you ever have any occasion to open up  
18 the box and see what was contained within the box?

19 A I did open the box to see -- I just opened  
20 it to see what it was and it appeared to be some  
21 checks.

22 Q Where was this box maintained prior to the

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1 time when Ms. Huber gave it to you?

2 A I have no idea.

3 Q Do you know whether the box was maintained  
4 at the Rose Law Firm?

5 A I don't know.

6 Q Or the governor's mansion?

7 A I don't know.

8 Q At whose direction did Ms. Huber give you  
9 this box?

10 A I don't know.

11 Q Did you ask Ms. Huber why you were getting  
12 this box?

13 A No. She told me she knew I was assembling  
14 a bunch of records together and these needed to go  
15 with them, so that's what I did.

16 Q What were the records you were assembling  
17 together?

18 A By that time, I had accumulated a bunch of  
19 files from Betsey Wright. I had accumulated some  
20 files that were at the Rose Law Firm that had come up  
21 during the campaign.

22 Q And what were the subject matters that

1 those files related to?

2 A The ones that I know about involved -- some  
3 of them involved Madison, my representation of  
4 Madison, and some of them involved a corporation  
5 called Southern Development Bank Corporation.

6 Q What was Southern Development Bank  
7 Corporation?

8 A It was a client of the Rose Law Firm that  
9 did lending in the state of Arkansas.

10 Q Who were the principals in Southern  
11 Development Bank Corporation?

12 A I think the owner of Southern -- will you  
13 ask that again? I think I was thinking of something  
14 else.

15 Q Who were the principals in Southern  
16 Development Bank Corporation?

17 A I believe the owner was South Shore Bank of  
18 Chicago.

19 Q Why were you collecting these particular  
20 documents?

21 A Because Mrs. Clinton served I believe --  
22 she may have served on the board of Southern

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1 Development Bank Corporation, and that's why -- we  
2 did legal work for them and it had come up during the  
3 campaign.

4 Q Why were files from the Rose Law Firm being  
5 taken from the Rose Law Firm and being given to you?

6 A They were Mrs. Clinton's -- the Southern  
7 Development Bank Corp files were Mrs. Clinton's  
8 files, but they were housed at the Rose Law Firm.  
9 Why were they being given to me? So we would  
10 determine where they were going to be housed while  
11 the Clintons were in Washington for eight years.

12 I had to do that, I apologize.

13 (Laughter.)

14 Q Do you have any knowledge of a transaction  
15 in which Whitewater lots were exchanged for a plane  
16 for Mr. McDougal?

17 A I have some knowledge of the plane. I  
18 didn't know until I read a bunch about it about the  
19 exchanging of lots for the plane.

20 Q What's your knowledge of the plane?

21 A I think my father-in-law ended up owning  
22 the plane.

1 Q And your knowledge with regard to the lots  
2 is simply what you've read in the newspaper?

3 A Or other -- I have to admit, I've been  
4 shown so many documents and plus there have been so  
5 many articles, I couldn't tell you where I first  
6 acquired knowledge about a lot of things, but I  
7 did -- I think that was more in connection with the  
8 special prosecutor's investigation.

9 Q Do you know a man named Tom Mars?

10 A Yes.

11 Q Who is Tom Mars?

12 A Tom Mars was an associate at the Rose Law  
13 Firm, and he left the firm and went into partnership  
14 with several lawyers in Fayetteville, Arkansas.

15 Q Do you know whether Mr. Mars has ever  
16 represented Mr. Lassiter?

17 A For some reason, I believe he did but I  
18 don't know that for sure. I may have read it in the  
19 paper.

20 Q Do you know a Mr. Kurt Bradbury?

21 A Yes.

22 Q Who is Kurt Bradbury?

1 A Kurt Bradbury for most of the time -- well,  
2 I can't even say that. Kurt Bradbury was the  
3 president and CEO of Worthen Banking Corporation.  
4 Prior to that he worked for Stevens, Inc. He  
5 attended the University of Arkansas on a baseball  
6 scholarship and has been a friend -- friend of mine  
7 for a long time and a client of the firm, at least  
8 the businesses he worked for until I left. I think  
9 he is now back at Stevens, Inc.

10 Q Have you ever discussed any loans that were  
11 made to President or Mrs. Clinton by the Worthen Bank  
12 with Mr. Bradbury?

13 MR. KRAVITZ: What's -- is that relevant?  
14 How is that relevant to the resolution?

15 MR. GIUFFRA: Off the record.

16 (Discussion off the record.)

17 MR. GIUFFRA: Could you read back the last  
18 question, please?

19 (The reporter read the record as requested.)

20 THE WITNESS: To them personally, no. I  
21 don't know that there were any.

22 BY MR. GIUFFRA:

1 Q What loans have you discussed with  
2 Mr. Bradbury?

3 A My understanding is that Worthen at one  
4 point made a loan to the campaign and we would have  
5 had some general discussions about that loan.

6 Q During the 1992 campaign?

7 A Yes.

8 MR. KRAVITZ: Objection. Well, any  
9 questions after that I object to.

10 BY MR. GIUFFRA:

11 Q Have you ever discussed James McDougal with  
12 Jim Blair?

13 A Yes.

14 Q What have you discussed about James  
15 McDougal with Jim Blair?

16 A Well, it's -- that's hard to say. I can  
17 give you some background on where -- why I would have  
18 been, but it's hard for me to recall a specific  
19 conversation.

20 Jim helped the Clintons do some background  
21 work on Whitewater during the campaign, and then it  
22 was my understanding that Jim is the one who

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1 negotiated with Mr. McDougal on the sale of the  
2 Clintons' interest of Whitewater to McDougal, sale  
3 back of their interest. And so in that connection, I  
4 may -- I had discussions with Jim during the  
5 campaign, and I'm sure I had other discussions, but  
6 specifically I think you would have to be a little  
7 bit more specific in asking. And I'm trying to give  
8 you the background so if you have some specific  
9 questions --

10 Q Yes, I understand. I understand. Did you  
11 have any discussions with President or Mrs. Clinton  
12 with regard to the closing out of their investment in  
13 Whitewater Development Corporation?

14 A It was on a checklist of things to get done  
15 after the election, so I suspect I was in a meeting  
16 when that was discussed just briefly, and that would  
17 have been it. I'm sorry, because I think I'm not  
18 being complete. Can you ask that question again?

19 (The reporter read the record as requested.)

20 THE WITNESS: The closing out, that would  
21 be it.

22 BY MR. GIUFFRA:



1 Q Is there some other matter that I haven't  
2 asked you the question -- would this be with regard  
3 to the -- strike that. I'll ask the question more  
4 clearly.

5 Did you have any discussions with Chris  
6 Wade during 1992-93 about Whitewater Development  
7 Corporation?

8 A Chris Wade?

9 Q Yes.

10 A I don't believe so.

11 Q Did there come a time during 1992 when the  
12 Clintons took steps to eliminate a loan that they had  
13 in connection with Whitewater Development  
14 Corporation?

15 A '92? A loan?

16 Q Yes.

17 A I don't know.

18 Q '93?

19 A I mean I just don't -- I don't know.

20 Q Did you have any further discussions about  
21 Whitewater Development Corporation with Jim Blair  
22 during 1992 that you can specifically recall, other

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1 than those you've testified to?

2 A With Jim?

3 Q Yes.

4 A Like I said, I'm sure we talked about it.

5 As the issues came up during the campaign, we were  
6 trying to answer questions from the press, and I'm  
7 sure that when the decision was made and he was the  
8 one to talk to McDougal and Sam Hueur, I'm sure I had  
9 that conversation or at least was in the room in that  
10 conversation. I don't remember any others.

11 Q Who is Sam Hueur?

12 A Sam Hueur. H-u-e-u-r, I think. He is the  
13 attorney for Mr. McDougal.

14 Q Did you ever speak to Mr. Hueur at all  
15 about Whitewater Development Corporation or Madison?

16 A Yes, I did talk to -- first of all, he was  
17 the attorney for Mr. McDougal, so when I was  
18 representing the FDIC in connection with the Frost  
19 litigation, I would talk to Sam if I needed some  
20 information regarding that. Once -- I don't know  
21 that I talked to Sam about Whitewater after that,  
22 though, or Madison. I would have talked to him about

1 other things, but not that.

2 Q Have you ever spoken to Jim Blair about the  
3 RTC criminal referrals relating to Madison or  
4 Whitewater?

5 A No.

6 Q Before I used the words "the closing out of  
7 Whitewater" and sort of indicated that you answered  
8 that question.

9 Is there another question that I should be  
10 asking in order to elicit further information with  
11 regard to your communications with Mr. Blair having  
12 anything to do with Whitewater Development  
13 Corporation?

14 A Well, what I'm -- no. What I was trying to  
15 point out was that during the campaign, there were  
16 questions that came up about Madison and Whitewater,  
17 and Jim was one of those people who helped prepare  
18 the answers, so I would have conversations with him  
19 about that during that period of time, but that  
20 wasn't about the closing out of Whitewater. That was  
21 about obtaining the information, the basic  
22 information.

1 Q Did you have any discussions with the  
2 President during '92 about Whitewater Development  
3 Corporation?

4 A No. He was on the campaign trail the whole  
5 time.

6 Q Have you ever discussed -- strike that.  
7 You testified previously of the  
8 conversation you had in '93 with the President about  
9 Whitewater Development Corporation; correct?

10 A Right.

11 Q Do you recall any other conversations --

12 A I think that actually was in early '94.

13 Q Do you recall any other conversations that  
14 you've ever had with the President at any time about  
15 Whitewater Development Corporation?

16 A No.

17 Q I believe you also testified that you had a  
18 communication with Mrs. Clinton, I think you said it  
19 was late '93, about Whitewater Development  
20 Corporation.

21 A No, I don't think I said -- I said it could  
22 have been.

1 Q Do you recall any other conversations that  
2 you've ever had with Mrs. Clinton about Whitewater  
3 Development Corporation at any time?

4 A Yes.

5 Q Okay. Could you tell us what conversations  
6 you recall with Mrs. Clinton about Whitewater  
7 Development Corporation?

8 A At some point -- and I've been asked this,  
9 and I still haven't pinned it down -- at some point,  
10 I learned that they were investors in something  
11 called Whitewater Development prior to the campaign,  
12 and understood that Mrs. Clinton was trying to clean  
13 it up; in other words, enlist people's aid in trying  
14 to gather together the documents to find out what in  
15 the heck was going on with Whitewater.

16 Q What did Mrs. Clinton say to you about her  
17 and Governor Clinton's investment in Whitewater?

18 A That it was an investment in real estate in  
19 northwest Arkansas that all the paperwork was  
20 being -- had been done by McDougal and that she was  
21 trying to -- that at some point I learned that tax  
22 returns had either not -- had not been filed and that

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1 she was enlisting people's aid to try to find out  
2 about it and to clean -- you know, to get the records  
3 so she knew exactly what was going on.

4 Q Do you know who she contacted in order to  
5 try to get the record about what was going on with  
6 regard to Whitewater?

7 A There was an issue involving a bankruptcy  
8 that Mr. Allen Bird of our firm worked on. At some  
9 point I learned that Mr. Kennedy was helping her, but  
10 I think that was during the campaign. I know  
11 Mr. Blair was involved, I know Mrs. Blair was  
12 involved, I know Mr. Foster was involved to the  
13 extent of answering questions from the press. And  
14 I'm sure Mr. Hueur was involved.

15 Q And would these questions have arisen -- is  
16 this the '92 Presidential campaign or prior to the  
17 '92 Presidential campaign?

18 A The bankruptcy occurred, I believe, prior  
19 to the campaign, and her desire to find out what was  
20 going on was prior to the campaign, but precisely  
21 when it was, I don't know.

22 Q Did Mrs. Clinton indicate to you any

1 concern about possible ramifications, either  
2 political or some other sort of ramifications, about  
3 this investment in Whitewater Development  
4 Corporation?

5 A Her concerns were that there was an  
6 investment out there that they didn't have a great  
7 deal of knowledge about what was going on.

8 Q Did she indicate to you that she or  
9 Governor Clinton might have some sort of a liability  
10 in connection with this investment?

11 A Liability, you mean like loans?

12 Q Yes.

13 A I don't know if I knew then that there were  
14 loans outstanding or not. I knew they were selling  
15 the real estate by contract for sale and therefore  
16 you've got outstanding paper notes going on, so I  
17 knew she was concerned about -- I think she was more  
18 concerned then about making sure that the tax returns  
19 were filed correctly. I don't remember any  
20 discussion about loans.

21 Q So your testimony is that you don't recall  
22 any discussion in which she said that we might have

1 some sort of contingent liability in connection with  
2 loans related to Whitewater Development Corporation?

3 A At some point I learned that there were  
4 some loans that were being paid off by the contracts  
5 for sale, but the specific concern of hers that we  
6 have a contingent liability out there was more I've  
7 got to first find out what in the heck is going on  
8 more than contingent liability.

9 Q How did you first learn how these loans  
10 were being paid off? Did Mrs. Clinton tell you?

11 A Either that or Mr. Bird. I can't tell you  
12 whether it was Mr. Bird or Mrs. Clinton.

13 Q Do you recall -- strike that.

14 Do you know if Mrs. Clinton took any steps  
15 to see to it that those loans would be paid off?

16 A I think she was trying to find out what was  
17 going on to make sure it was happening, whether there  
18 was a loss, whether there was a profit or what.

19 Q Do you know whether Mrs. Clinton spoke with  
20 Mr. McDougal?

21 A I don't know. It would be wrong for me to  
22 guess. I would suspect she did not, she would go

1 through Sam Hueur, but I don't know one way or the  
2 other.

3 Q What would be again your best guess as to  
4 when these initial conversations would have occurred?

5 A That's a good question. I think they were  
6 in '88, but I don't know that for sure.

7 Q Do you recall in 1988, approximately 1988,  
8 how many conversations you might have had with  
9 Mrs. Clinton about Whitewater Development  
10 Corporation?

11 A No. And I don't mean it that all of a  
12 sudden she called me down to her office or she was in  
13 my office and we sat down. I might have been in her  
14 office talking about something else and Allen walks  
15 in the door and asks her a question or she's in her  
16 office and the phone rings and she's talking to Sam.  
17 I just don't know how I first learned about it and  
18 how many times I might have been in the room when it  
19 was discussed. It wasn't that many.

20 Q Did you ever discuss with -- strike that.

21 Did you ever discuss the Clintons'  
22 investment in Whitewater Development Corporation with

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1 Mr. Bird?

2 A Mr. Who?

3 Q Allen Bird.

4 A Yes. I mean I knew that he was working on  
5 it.

6 Q Did you ever discuss it between the two of  
7 you?

8 A You mean as far as what was going on?

9 Q Yes.

10 A No. I discussed that he was working on it  
11 and subsequent to all this happening, I would have  
12 said something to him.

13 Q Were the Clintons a client of the Rose Law  
14 Firm in connection with Whitewater Development  
15 Corporation?

16 A I don't know. I mean, when you're helping  
17 out a friend, I don't know -- I don't kind of couch  
18 that in terms of representation, but I know Allen was  
19 doing some work for them.

20 Q You don't know whether the Clintons were  
21 paying the Rose Law Firm for performing this legal  
22 service?



1 A No. I would be surprised, as if I didn't  
2 pay the tax lawyer who did my will in the firm.  
3 That's common practice to help each other out, but I  
4 don't know.

5 Q Did you personally take any action back in  
6 this approximate 1988 period in connection with  
7 Whitewater Development Corporation?

8 A No, I did not.

9 Q Let's just close the 1988 period. Did you  
10 have any other discussions with Mrs. Clinton about  
11 Whitewater Development Corporation?

12 A At some point the issue came up during the  
13 campaign. They were on the road. We attempted to  
14 assemble as many documents as we could. There were  
15 specific written questions submitted by several  
16 members of the press that we attempted to answer, and  
17 in that connection, I think I had a brief  
18 conversation with her to kind of go -- somebody had  
19 prepared written responses to some of the questions,  
20 and I think a couple of questions came up.

21 Q Do you recall the questions that you  
22 discussed with Mrs. Clinton about Whitewater

1 Development Corporation during the 1992 campaign?

2 A It was actually more doing -- relating to  
3 Madison. It had to do with -- we had a difficult  
4 attorney-client privilege issue because we were  
5 getting inquiries from the press that they were  
6 clearly getting information from somebody within the  
7 FDIC or RTC, but we still felt like we had a  
8 privilege issue, and so we had to -- we could only  
9 answer within the confines of the privilege, so I had  
10 to discuss that with her.

11 Q These questions had to do with the Rose Law  
12 Firm's representation of the RTC?

13 A And Madison. We didn't know who could  
14 waive the privilege to answer the questions about the  
15 '84 and '85 representation, so we had to discuss  
16 that.

17 Q Did Mrs. Clinton indicate to you any  
18 concerns about the 1984 and '85 representations?

19 A What do you mean "concerns"?

20 Q What did she discuss -- strike that.

21 What did you discuss with Mrs. Clinton  
22 about the 1984-85 Rose Law Firm representations of

1 Madison?

2 MS. SHORES: Other than the privilege  
3 issue?

4 MR. GIUFFRA: Yes.

5 THE WITNESS: One of the issues was that  
6 several members of the campaign were wanting to say  
7 that Mrs. Clinton personally was not involved in any  
8 of the representation with regard to Madison.

9 BY MR. GIUFFRA:

10 Q Do you recall who those people were?

11 A Gosh, no. I mean you'd get -- I mean if  
12 you knew the campaign, there was always 100 people  
13 screaming. So -- but I'm just saying as a general  
14 context, feel that that was -- was well, just say you  
15 didn't do any of the work. We had to go check the  
16 records, see how much was involved, see how we could  
17 couch an answer without revealing anything with  
18 regard to the privilege.

19 Q Was it Mrs. Clinton's recollection that she  
20 had not performed any work for Madison?

21 A Her recollection was she had not performed  
22 very much work, a small amount of work, that it was

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1 primarily Rick Massey who did most of the work,  
2 although she knew she was the billing partner, and  
3 she couldn't recall -- you know, the issue came up,  
4 I'll give you an example.

5 The issue came up about the letter to  
6 Beverly Bassett, and she didn't even recall talking  
7 to Beverly Bassett, so that issue came up. I in  
8 effect was relating to her what limited information  
9 we had based on the file and then talking about how  
10 we could answer without waiving the privilege.

11 Q Now, Beverly Bassett Schaeffer was the  
12 state securities commissioner of Arkansas in the  
13 mid-'80s; is that correct?

14 A Yes.

15 Q Do you know her?

16 A Yes.

17 Q Does she know Mrs. Clinton?

18 A Yes.

19 Q What is the nature of the relationship  
20 between Beverly Bassett Schaeffer and Ms. Clinton?

21 A The nature of the relationship?

22 Q Are they close friends, friends?

1 A Not close friends. I would not -- she  
2 worked in another law firm, and I think they got to  
3 know each other, and I think probably even better  
4 once she got married. She was Beverly Bassett at the  
5 time. She was the daughter of Woody Bassett, who was  
6 a supporter of the Clintons. But she married Archie  
7 Schaeffer, who was Senator Bumpers's top aide, and I  
8 think that's how she got to know the Clintons better.

9 Q What, if anything, do you know about the  
10 Rose Law Firm's representation of Madison in  
11 connection with the issuance of preferred stock?

12 A I do know I didn't know anything about it  
13 at the time we were doing it.

14 Q What was the approximate time?

15 A I shouldn't say that. I knew that a young  
16 lawyer in the firm was having discussions with  
17 Latham, John Latham, about doing some securities  
18 work.

19 Q Who is John Latham?

20 A I think his title was president of  
21 Madison. I don't know that for sure. I mean if I  
22 had the records, I'd be pretty sure about that.

1 Anyway, he was doing some security work. When the  
2 issue came up in '89 or '90, we found out that the  
3 firm had made a presentation to the securities  
4 department to get consent to issue preferred stock  
5 back in the mid-'80s and that that consent had been  
6 approved by Beverly Bassett, but because of the  
7 financial condition of the institution, an attempt to  
8 place that preferred stock never went forward.

9 And then I learned more about it in '92  
10 when the issue came back again and learned more about  
11 it when I was questioned in '94.

12 Q What did you learn about the issuance of  
13 this preferred stock in 1992?

14 A I went back to see what the extent of  
15 Mrs. Clinton's involvement was. I went back to see  
16 whether the firm had -- how much work we had billed  
17 the client for, how much work would have been done  
18 and verified that we had not -- that nothing had gone  
19 forward with regard to the offering.

20 Q What did you learn about the extent of time  
21 that had been billed in connection with this matter  
22 of the preferred stock for Madison?

1 A I can't remember, but it's in the bill. I  
2 mean it was several -- it was two or -- I hate to  
3 guess. That would be wrong of me.

4 Q Do you have just an approximation?

5 A It might have been 2- or \$3000 for all the  
6 securities work, but I may be off a thousand dollars.

7 Q Was Mrs. Clinton a securities lawyer?

8 A No.

9 Q Was she a litigator?

10 A Yes.

11 Q Or more of a generalist?

12 A Well, she was more of a generalist. As we  
13 became more specialists, she specialized, although we  
14 all did a little general practice. Probably in the  
15 '80s, we were more generalists than specialists.

16 Q Is it Mr. Massey?

17 A Yes.

18 Q What year did he graduate from law school,  
19 do you have any idea?

20 A In the early '80s.

21 Q So when did the Rose Law Firm first begin  
22 representing Madison?

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1 A We -- I think it was '84. May have been  
2 '85.

3 Q And I believe you previously testified that  
4 both Mrs. Clinton and Mr. Massey brought Madison in  
5 as a client; is that right?

6 A I think what I said was Massey was the one  
7 who wanted them as a client and that Mrs. Clinton was  
8 one of those who helped him accomplish that task.

9 Q Now, what was Mr. Massey's connection with  
10 Madison?

11 A He was friends with Mr. Latham.

12 Q And what sort of -- strike that.

13 I gather that the Rose Law Firm had a  
14 retainer relationship with Madison during this period  
15 '84-85; is that correct?

16 A That is correct.

17 Q What was the amount of the retainer per  
18 month?

19 A \$2000.

20 Q Was this a retainer whereby the law firm  
21 was paid even if no work was performed?

22 A That became an issue when we ceased the

1 representation.

2 Q Why did it become an issue when you ceased  
3 the representation?

4 A Because we had to decide whether to send  
5 some of the money back or not.

6 Q And to ask the first question, why did you  
7 cease the representation of Madison and when?

8 A I have to admit that my memory is refreshed  
9 by a bunch of documents I've seen, but the main  
10 reason was that -- or one of the major reasons was  
11 that we had not done any work in the recent few  
12 months or for a while for Madison, so that we were  
13 not doing any work.

14 Another reason was that the FSLIC was  
15 saying that we would not -- we were doing work for  
16 FSLIC -- that we would be eligible for additional  
17 work only if we could certify that we didn't do work  
18 on a regular basis for any S&L.

19 So the firm was making a determination of  
20 whether we wanted -- we had that relationship and  
21 some small relationships with some other S&Ls --  
22 whether we wanted to not do any regular work for S&Ls

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1 so we would be eligible for the FSLIC business.

2 Q Did you discuss the termination of the  
3 firm's representation of Madison with Mrs. Clinton?

4 A Yes.

5 Q What do you recall about your discussion  
6 with Mrs. Clinton?

7 A I recall primarily the discussion regarding  
8 whether we should -- whether since we didn't do any  
9 work for Madison, hadn't done any in a while, whether  
10 we should terminate it in light of the memo that was  
11 being circulated, and second, whether she should  
12 return the retainer that had not been earned.

13 Q And what decision was made with regard to  
14 returning the retainer?

15 A The retainer was returned.

16 Q Now, at about this time, was there any  
17 discussion of any difficulties that Mr. McDougal was  
18 facing?

19 A I don't think there was any -- I can't say  
20 there wasn't any but I'm sure that -- because I'm  
21 sure there might have been something about McDougal  
22 is no longer running the institution, although he was



1 there on a regular basis, but primary reason was the  
2 others that I told you.

3 Q Have you ever discussed James McDougal with  
4 President Clinton?

5 A No, other than that one conversation I told  
6 you about.

7 Q In September -- or maybe January of --

8 A January or February of '94 where he just  
9 said do you believe this is never going to end?

10 Q So it was your testimony that all during  
11 the '80s you never discussed James McDougal with --

12 A Not Jim McDougal, no. I had a lot of  
13 conversation about McDougal but none with the  
14 President.

15 Q With whom did you have conversations about  
16 McDougal during the 1980s?

17 A My in-laws.

18 Q Do you recall any conversation with  
19 Mrs. Clinton about Mr. McDougal?

20 A I think I told you when we were talking  
21 about Whitewater and her wanting to find out what was  
22 going on, we had some conversations about trying to

1 obtain information about the McDougals, and I --  
2 there was also -- I'm sure we had some discussions  
3 when Mrs. McDougal was running for the city board.

4 Q Going back to the preferred stock offering,  
5 did you ever discuss that preferred stock offering  
6 with Mrs. Clinton?

7 A I did discuss the fact that the campaign  
8 was wanting to say that she had no involvement in the  
9 preferred stock offering whatsoever, and I told her  
10 there was something in the bill that indicated she  
11 had one telephone conversation with Ms. Bassett.

12 Q Did she express surprise when you advised  
13 her that she had had a telephone conversation with  
14 Ms. Bassett?

15 A Yes.

16 Q Did you also --

17 A I told her what Mr. Massey recalled about  
18 that.

19 Q What did Mr. Massey recall about  
20 Mrs. Clinton's involvement in connection with the  
21 preferred stock offering?

22 A He said the best of his recollection was

1 that he was in Mrs. Clinton's office when -- now,  
2 this is what -- he was in Mrs. Clinton's office on  
3 another matter when Ms. Bassett called him and they  
4 put her on the speakerphone, so that's why he thought  
5 she had a small time entry about that conversation.

6 Q And what did Mr. Massey say to you about  
7 the nature of the conversation that Mrs. Clinton had  
8 with Ms. Schaeffer?

9 A That he was primarily the one who was doing  
10 the talking.

11 Q What was the subject matter of the  
12 conversation between the Rose Law Firm attorneys and  
13 Ms. Schaeffer?

14 A My recollection was to tell Mr. Massey that  
15 the preferred stock offering had been approved, but I  
16 don't know that for sure. I don't know the truth. I  
17 just know what Mr. Massey told me.

18 Q So Mr. Massey told you that during this  
19 conversation that was on a speakerphone, that  
20 Mrs. Clinton was present for, Mrs. Schaeffer advised  
21 Mr. Massey and Mrs. Clinton that the preferred stock  
22 offering had been approved?

1 A Offering had been approved, yes.

2 Q Have you ever seen a letter indicating --  
3 strike that.

4 Have you ever seen a letter from  
5 Ms. Schaeffer to Mrs. Clinton relating to an issuance  
6 of this preferred stock for Madison?

7 A Yes.

8 Q When did you first see that letter?

9 A 1992.

10 Q And in what connection did you first see  
11 this letter?

12 A I'm sorry. I may have seen it in '89.

13 Q Why would you have seen it in 1989?

14 A In connection with the Rose firm's  
15 representation of Madison against Frost & Company.

16 Q Do you recall taking any action after you  
17 saw this letter in 1989?

18 A No, I did not.

19 Q When you saw the letter during the 1992  
20 campaign, did you discuss the letter with  
21 Mrs. Clinton?

22 A I don't think I discussed the letter

1   itself, no. I think I would have discussed with her  
2   the fact that there was a time entry and I may have  
3   said there's one letter that's addressed to you. I  
4   don't remember whether I did or not.

5       Q   Did Mrs. Clinton indicate any recollection  
6   of having participated in any telephone conference  
7   call with Ms. Schaeffer?

8       A   No, she did not. She was surprised.

9       Q   Mr. Hubbell, I believe you testified there  
10   was another matter that came up in the course of this  
11   conversation that you had with Mrs. Clinton during  
12   the campaign in connection with responding to the  
13   reporters' questions.

14      A   The attorney-client privilege issue?

15      Q   Yes.

16      A   Yes.

17      Q   So it was the attorney-client privilege  
18   issue, the preferred stock issue. Are those the two  
19   issues that came up during that conversation?

20      A   That conversation, yes. I mean there was a  
21   whole two- or three-page list of questions from  
22   Mr. Gerth, and I think those were the only two, but I

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1   can't be -- without looking at the questions again  
2   from Mr. Gerth, I couldn't tell you that that was  
3   all, but that was primarily it.

4       Q   Other than conversations you've already  
5   testified to, do you recall any conversations that  
6   you've had with Mrs. Clinton about either James  
7   McDougal, Madison or Whitewater?

8       A   In '92. It seems like I had a conversation  
9   with her where she told me that Jim Blair was helping  
10   pull the records together, but I just don't remember.

11      Q   Do you recall approximately when that  
12   conversation might have occurred?

13      A   It would have been sometime after that  
14   conversation I told you about, because the issue kept  
15   coming up.

16      Q   So the first conversation would have been  
17   when, early '92?

18      A   Yeah, I'd say February of '92,  
19   February/March.

20      Q   Do you recall anything further about the  
21   conversation that you had with Mrs. Clinton in which  
22   she discussed the fact that Mr. Blair was involved in

1 collecting records related to Whitewater?

2 A No, other than personal conversation on how  
3 she was doing, things of that sort.

4 Q Prior to the 1992 Presidential campaign, do  
5 you recall any other conversations that you had with  
6 Mrs. Clinton having to do with -- and we'll go  
7 through the subjects -- James McDougal?

8 A I know that I had conversations with her  
9 when we first took on the Madison representation,  
10 that was in '84 or '85.

11 Q What do you recall about those  
12 conversations in '84-85 about the Madison  
13 representation?

14 A The law firm did not want to -- some of the  
15 members of the law firm did not want to represent  
16 Madison until Mr. McDougal had paid an old bill owing  
17 the firm.

18 Q And what was Mrs. Clinton's position with  
19 regard to whether the firm should represent McDougal?

20 A She thought that if he got right with the  
21 firm, that she didn't see any reason why we shouldn't  
22 represent him.

1 Q Did McDougal ever "get right with the  
2 firm"?

3 A Yes, he did.

4 Q At that time did Mrs. Clinton indicate to  
5 you that she and Governor Clinton had a business  
6 relationship with Mr. McDougal?

7 A I don't believe so. I don't know whether  
8 she did -- I don't know when I learned about the  
9 Whitewater thing, but I don't think it was in '84 or  
10 '85.

11 Q When do you think you first learned about  
12 her investment in Whitewater?

13 A I think it was in '88. It could have been  
14 prior to that.

15 Q Do you recall any other conversations that  
16 you had with Mrs. Clinton during the period prior to  
17 the 1992 campaign in which James McDougal was  
18 discussed?

19 A As I said, it came up in connection with  
20 terminating the relationship with Madison. It came  
21 up at some point when we were discussing Whitewater.  
22 It probably came up in connection with doing a

1 conflicts check in connection with work for the  
2 FDIC/FSLIC in '88.

3 Q What do you recall about any discussions  
4 you might have had with Mrs. Clinton in connection  
5 with the conflicts check?

6 A At some point the firm was asked to bid on  
7 several S&Ls that were about to be taken over, and  
8 Madison was one of them. Mr. Foster was in charge of  
9 obtaining information about that, and in that  
10 process --

11 Q He was obtaining information from --

12 A Firm members.

13 Q From firm members.

14 A The subject of whether there was any  
15 possibility of us doing the overall work for  
16 FSLIC/FDIC came up, and we had to obtain information  
17 on what we had done in the past so we could report  
18 that to the FDIC.

19 Q And did Mr. Foster and yourself speak with  
20 Mrs. Clinton with the firm's prior representation of  
21 Madison?

22 A I'm confident we did, but I don't remember

1 exactly what was discussed. I know what the result  
2 was.

3 Q And the result just for the record was?

4 A The result was that we reported that to the  
5 FDIC and we were allowed to bid on all but the  
6 Madison work.

7 Q With regard to the Rose Law Firm's  
8 representation of Madison during that period  
9 1984-1986, did you ever have any conversations with  
10 Mr. Massey?

11 A I did.

12 Q And what conversations did you have with  
13 Mr. Massey between '84 and '86 about the Rose Law  
14 Firm's representation of Madison?

15 A Mr. Massey asked me to help him get the  
16 work.

17 Q This would be initially in '84?

18 A Yes.

19 Q What steps did he ask you to take to get  
20 the work for the firm?

21 A He asked me if I knew Mr. McDougal and  
22 asked if I would help him get the work, that it was



1 the one savings and loan in Little Rock, that we had  
2 some opportunity of doing the work and that he had  
3 been talking to Mr. Latham and that to the extent I  
4 could, would I put in a good word for him. Those are  
5 general. I'm sure --

6 Q Did you have a relationship with  
7 Mr. Latham?

8 A No. He didn't ask me to put in a word with  
9 Mr. Latham. He knew that I was politically involved  
10 and he thought that I could talk to Mr. McDougal and  
11 also my father-in-law was starting to do some work  
12 with Mr. McDougal.

13 Q Did you ever speak to Mr. McDougal about  
14 this initial -- about the firm's representation of  
15 Madison?

16 A No.

17 Q Did you ever take any steps to "put a good  
18 word in" for Mr. Massey?

19 A I might have, but I don't remember doing  
20 so. I think I only remember meeting Mr. McDougal  
21 once in my life.

22 Q In '84, we talked about this, Massey would

1 have been two years out of law school. Do you have  
2 any understanding as to why Madison would want to  
3 retain someone two years out of law school to  
4 represent it?

5 A He was -- Mr. Massey was very aggressive at  
6 trying to get representation. He was older than just  
7 fresh out of law school. He was in his 30s, looked  
8 like he was in his 50s. You want to know why? No.

9 (Laughter.)

10 And I suspect Mr. Massey was selling not  
11 just his own expertise but the expertise of the firm.

12 Q Do you know whether Mrs. Clinton met with  
13 Mr. McDougal in connection with obtaining this  
14 representation?

15 A No, I do not.

16 Q Do you know whether -- strike that.

17 Do you have any knowledge as to whether  
18 Governor Clinton ever spoke with Mr. McDougal about  
19 obtaining this representation for the Rose Law Firm?

20 A I've read allegations about it in the  
21 paper. I have no knowledge of it and don't believe  
22 it, but I don't have any knowledge one way or the

1 other.

2 Q Did the Rose Law Firm have any procedures  
3 in place with regard to contacts -- strike that.

4 Mrs. Clinton was obviously the wife of the  
5 governor of Arkansas. Did the Rose Law Firm have any  
6 procedures in place or any limitations on -- strike  
7 that.

8 Do you recall any discussions at any time  
9 with regard to whether it was proper for Mrs. Clinton  
10 to be engaged in legal representations having to do  
11 with the state of Arkansas, given the fact that her  
12 husband was the governor?

13 A I'm sure we had discussions, general  
14 discussions in that regard. I can't remember which  
15 ones. I know we did when she first joined the firm,  
16 that he was the Attorney General. Those were the  
17 ones that we specifically had firm meetings on and  
18 discussed what was appropriate and not appropriate.  
19 And at some point we implemented procedures where she  
20 would not share in any fees the firm received from  
21 work being done for state agencies or on state bond  
22 issues.

1 Q And those procedures continued throughout  
2 the time that Mrs. Clinton was a member of the Rose  
3 Law Firm?

4 A Those procedures once in place stayed until  
5 she left the firm.

6 Q Were these written procedures?

7 A The procedures with regard to state fees  
8 and bond issues were memorialized by a memo and then  
9 implemented at the end of each fiscal year by  
10 adjustments to the firm formula to take out state  
11 fees.

12 Q And these procedures had to do with the  
13 actual representation of state agencies; is that  
14 correct? Or bond issues?

15 A Or bond issues where the state was the  
16 issuing entity.

17 Q Were there any procedures limiting  
18 representations of private clients before state  
19 agencies?

20 A Other than what might be involved in state  
21 law or state ethics, no, not that -- in writing, no.

22 Q Did you ever discuss with Mrs. Clinton any

1 concerns -- strike that.

2 Did you ever have any discussions about  
3 whether it was appropriate for Mrs. Clinton to be  
4 engaged in the representation of private parties  
5 before state agencies?

6 A I don't think so, because I don't remember  
7 that occurring.

8 Q So it would be your testimony that as far  
9 as you know, Mrs. Clinton never represented a private  
10 client of the Rose Law Firm before a state agency?

11 A Before the agency?

12 MS. SHORES: I think that was implicit in  
13 his answer. That's a fine question, but I just don't  
14 want the suggestion to be on the record that that was  
15 somehow followed from his answer to the previous  
16 question. You asked whether he had had any  
17 discussions with her about whether it was proper for  
18 her -- and it wasn't clear whether her or the firm --  
19 to represent private parties before state agencies  
20 and then you asked, so therefore it's your testimony  
21 that she never did that.

22 BY MR. GIUFFRA:

1 Q I'll rephrase the question. The answer to  
2 the first question -- the first question is did you  
3 ever have any discussions with Mrs. Clinton about any  
4 concerns that she had about any representations that  
5 she might be engaged in for private clients having to  
6 do with -- using it broadly so we can move this  
7 along -- having to do with the state of Arkansas or  
8 its agency subdivisions?

9 A I hate to do this, but I need to go to the  
10 bathroom, and your answer is going to be longer than  
11 a few sentences.

12 MR. GIUFFRA: Okay.

13 (Recess.)

14 MR. GIUFFRA: What was the last question,  
15 please?

16 (The reporter read the record as requested.)

17 THE WITNESS: To put it in a general  
18 context first and then we can get into specifics, in  
19 going back and trying to see if Mrs. Clinton ever  
20 appeared before a state nonjudicial entity, the only  
21 circumstance that I'm aware of is the conversation or  
22 appearance, whatever, before the securities

1 department on the Madison matter, at least in the  
2 records of the firm, but because certain judges are  
3 appointed by the President -- I mean the governor,  
4 now President, the issue would periodically come up  
5 in the connection of a judicial or quasijudicial  
6 proceeding, and in those circumstances, we would  
7 discuss it.

8 Sometimes it would be raised by the  
9 opposing counsel, sometimes she would raise it with  
10 me or with some other member of the litigation  
11 section, and we would deal with it on a case-by-case  
12 basis.

13 So when you say state body, I hate to -- I  
14 don't want to exclude the judicial or quasijudicial  
15 bodies like a workers' comp commission. Or it  
16 usually came up in a situation where the President  
17 may have appointed a judge and then a judge ran after  
18 a period of time for another judgeship and then --  
19 but somebody might raise it or she might raise it  
20 herself to make sure that that -- how that issue --  
21 whether it was appropriate or not for her to appear.  
22 That's why ultimately she got more and more into a

1 federal type practice.

2 Q Do you remember discussions about just the  
3 general problem of her being able to represent  
4 private clients before the state?

5 A Not the state, but in litigation, there was  
6 a very rare occasion that she would be appearing  
7 before the state. I'm honest in saying I don't  
8 remember, other than this coming up, and I think this  
9 is why we were all so surprised to even find a  
10 reference to a phone call or a letter, that she ever  
11 appeared before a state body or a state appointed  
12 official. The firm had to make a public disclosure  
13 once a year on that issue, and so we were trying to  
14 be very careful.

15 Q Have you ever had any discussions with  
16 anyone at any time about a --

17 MR. KRAVITZ: Don't be so narrow, Bob.

18 BY MR. GIUFFRA:

19 Q -- about a fundraiser that was held at  
20 Madison Savings & Loan, Madison Guaranty Savings &  
21 Loan in 1985?

22 A I read it in the newspaper and I don't

1 believe I've discussed it with anyone, even my  
2 lawyer.

3 Q Mr. Hubbell, telephone records that we've  
4 obtained, messages, indicate you had a conversation  
5 on March 15, 1993 --

6 MR. KRAVITZ: Is that what they indicate or  
7 do they indicate that he received a phone message?

8 BY MR. GIUFFRA:

9 Q It indicates some sort of either a  
10 message -- strike that.

11 On March -- we have a message slip dated  
12 March 15, 1993, time of 7:15, Jim Lyons, phone, and  
13 it says "covert action...i.e., Justice interaction,  
14 Rindskopf." Do you know what that refers to?

15 MS. SHORES: Rindskopf?

16 MR. FISHMAN: Off the record for a second.  
17 (Discussion off the record.)

18 BY MR. GIUFFRA:

19 Q Did you ever discuss James McDougal with  
20 Seth Ward?

21 MR. KRAVITZ: Do you want to wait until  
22 Paul gets back?

1 MR. GIUFFRA: This is all going to be --  
2 presumably going to be pre-Justice Department stuff.  
3 We can wait. It's up to you.

4 MS. SHORES: I don't care.

5 MR. GIUFFRA: We'll just wait, that's  
6 fine.

7 MS. SHORES: Which Seth Ward?

8 MR. GIUFFRA: His father-in-law.

9 (The reporter read the record as requested.)

10 THE WITNESS: Yes.

11 BY MR. GIUFFRA:

12 Q What do you recall about any discussions  
13 you might have had with Seth Ward about James  
14 McDougal?

15 A I would have had a series of discussions  
16 with Mr. Ward before he went to work for McDougal and  
17 about the transaction where he purchased property on  
18 behalf of Madison. I would have had conversations --  
19 another set of -- I mean multiple conversations while  
20 he was employed with Madison, specifically about the  
21 matters that he was working on at Madison and sale of  
22 the properties for Madison and McDougal, what was



1 going on at Madison at the time and the airplane.

2 After McDougal left, he -- I would have had  
3 a lot of conversations regarding the fact that he  
4 believed that the institution was about to close and  
5 McDougal's lending practices. And then once -- then  
6 I had a series of conversations where he was wanting  
7 to sue Mr. McDougal where I declined to do so, and he  
8 tried to continue to get me to do so.

9 And then in connection with his lawsuit,  
10 against Madison, he would try to tell me what was  
11 going on in connection with that lawsuit. I had a  
12 lot of conversations with Mr. Ward about Jim  
13 McDougal, but those -- I tried to do that with the  
14 context of --

15 Q I understand. Did any of those  
16 conversations relate to Whitewater Development  
17 Corporation?

18 A I didn't know at the time but as it turned  
19 out, the airplane did.

20 Q Can you recall any other conversations that  
21 might have had anything to do with Whitewater?

22 A With Whitewater, no. I don't think he had

1 any knowledge of Whitewater.

2 Q Have you ever discussed Whitewater  
3 Development Corporation with Jack Quinn?

4 A Jack Quinn? Jack was present when Jim  
5 Lyons and I -- we all three of us had lunch together  
6 and we discussed the fact that certain documents -- I  
7 thought -- at one time thought I was delivering them  
8 to Jim, Jim thinks he was delivering them to me, and  
9 I think he was right, certain documents regarding  
10 Madison and Whitewater.

11 Q So Jim was delivering the documents to you?

12 A Let me make sure I'm right on this. Yes,  
13 that's right.

14 Q Jim delivered documents relating to  
15 Madison/Whitewater or just Whitewater?

16 A It was Whitewater.

17 Q So Jim was --

18 A Let me get this straight. I apologize. I  
19 had it in my memory.

20 Q We'll get it out to see.

21 A Okay. Jim brought them to me, yes.

22 Q And would this have been in October of

1 1993?

2 A No, wait a minute. I brought them to  
3 Jim -- excuse me, I'm sorry.

4 MS. SHORES: Right. I'm sorry.

5 THE WITNESS: Right. I brought the  
6 documents to Jim Lyons. He then ultimately got some  
7 documents to me, but at the White House Jim is the  
8 one who -- I brought documents to Jim. And I  
9 apologize because my memory is not good, but I  
10 remember that I ultimately was mistaken in my  
11 testimony initially on that.

12 BY MR. GIUFFRA:

13 Q Let's see if we can get this --

14 A Okay. I'm sorry about this.

15 Q Let me show you a message pad which we have  
16 received from you which is Bates number 10299.

17 A This is October 25.

18 MS. SHORES: This was not my copy.

19 MR. GIUFFRA: Justice Department then.

20 MS. SHORES: This didn't come from me.

21 THE WITNESS: October 25.

22 BY MR. GIUFFRA:

1 Q Does that message slip refresh your  
2 recollection?

3 A No. There is another message slip that  
4 would.

5 MS. SHORES: Off the record for a second.  
6 (Discussion off the record.)

7 BY MR. GIUFFRA:

8 Q This first message slip says "will be in  
9 town tomorrow, would like to see you either on  
10 Wednesday or Thursday to discuss/review documents on  
11 WDC Company."

12 A Right.

13 MR. FISHMAN: What's the Bates number?

14 MR. GIUFFRA: 10299.

15 THE WITNESS: The date is October 25.

16 BY MR. GIUFFRA:

17 Q During 1993 had you been having discussions  
18 with Mr. Lyons about documents related to Whitewater  
19 Development Corporation?

20 A No, not during 1993. At some point we  
21 started having discussions about documents, and then  
22 ultimately about documents regarding Whitewater

1 Development Company.

2 Q Was that in '93?

3 A Well, to give you some history again, I'm  
4 sorry to do this, but it's hard to take it out of  
5 context.

6 Q No, I understand.

7 A In 1992 after the election, Jim was one of  
8 the lawyers responsible for making or giving advice  
9 to the President-elect about the disposition about  
10 records, campaign records, personal records and  
11 things of that sort, so Jim was aware of the files  
12 that I ultimately obtained from Betsey Wright.

13 As well, Jim had been the person in the  
14 campaign who had done work on Whitewater, so that  
15 issue had died. Then after Vince's death, Jim and I  
16 had some conversations about the documents that I  
17 still had in my possession that were the Clintons'  
18 personal records.

19 And then when Whitewater started hitting  
20 the press again, Jim and I started having  
21 conversations about getting his Whitewater documents  
22 as well as the records that I had to the Clintons'

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1 private counsel.

2 If that helps put it in context.

3 Q Let me show you another message slip, DOJ  
4 10306?

5 A Right. I'm familiar with that.

6 Q What do you recall about -- did you  
7 ultimately bring these documents with you to lunch?

8 A Yes, I did.

9 Q About how many documents were there?

10 A They were a wine box full of documents.

11 Q A wine box?

12 A You know, a case of wine. Took out the  
13 carton and wine and put in some papers. That's how  
14 big it was.

15 Q Do you recall specifically what those  
16 documents were about?

17 A Primarily they were documents and drafts of  
18 documents from an accounting firm that had done some  
19 recapitulation regarding Whitewater.

20 Q And do you recall the name of the  
21 accounting firm?

22 A No, I don't.

1 Q Do you recall why you were bringing the  
2 documents to lunch?

3 A Because Jim asked me to bring them with him  
4 because he was going to meet with Bruce Lindsey to  
5 talk about Whitewater and he wanted to look over some  
6 of the old files he had looked over.

7 Q Did he indicate to you why he was meeting  
8 with Bruce Lindsey, other than just to talk about  
9 these?

10 A I think by that time Bruce had been  
11 designated as the point person to speak to the press  
12 regarding Whitewater matters.

13 Q Did you discuss these documents at lunch  
14 with Mr. Quinn?

15 A Well, I discussed them actually with  
16 Mr. Lyons. Mr. Quinn was there and knew that I had  
17 brought some documents to him.

18 Q What do you recall about the discussion you  
19 had with will Lyons at this lunch at which Mr. Quinn  
20 was present?

21 A That it looked like his work was going to  
22 come up for review again and that just essentially

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1 that Whitewater was back.

2 Q During this period did you also have  
3 conversations with Mr. Lindsey?

4 A Mr. Lindsey? I'm sure I did, but it would  
5 have been brief, something like Bruce, I understand  
6 you're the point person, and remind him that the  
7 files were still in my possession if he needed them,  
8 things of that sort, nothing -- and there's no -- it  
9 was not like Web, I need to sit down with you for an  
10 hour and go over what you know about it. It was more  
11 like a question like Bill Kennedy asked or primarily  
12 for me just to tell him that the documents were still  
13 in my possession but that I was going to get them to  
14 David Kendall.

15 Q Are you aware there were two Lyons reports,  
16 a short Lyons report and a long Lyons report?

17 A No.

18 Q During this period when you had recused  
19 yourself from matters involving Madison/Whitewater  
20 back in -- I guess formally November 3.

21 A Formally in October.

22 Q In October, but you still maintained these

1 records in your possession?

2 A Yes.

3 Q Did you ever have any discussions with  
4 anyone about having the documents being taken out of  
5 your possession?

6 A Yes.

7 Q Who did you speak with?

8 A Mr. Bob Barnett and ultimately Mr. David  
9 Kendall.

10 Q When did you first speak with Mr. Barnett  
11 about the transfer of these documents from your  
12 possession to Williams & Connolly?

13 A I talked about transferring them to  
14 Mr. Barnett within a week or two after Mr. Foster  
15 died, and we continued those conversations until he  
16 told me that Mr. Kendall had finally been employed  
17 and that I should get them -- that David would be  
18 giving me a call.

19 Q With regard to Mr. Barnett, what was the  
20 nature of your relationship with Mr. Barnett?

21 A I had met Mr. Barnett at social occasions  
22 at the White House, and his wife and a very good

1 friend of mine are both CBS correspondents so I met  
2 them at other social occasions. At some point I  
3 found out that Bob was acting as a personal counsel  
4 to the President.

5 Q In connection with Whitewater?

6 A No.

7 Q Just generally?

8 A Generally, prior to Whitewater. I don't  
9 know -- I don't know if any official relationship had  
10 been developed but I think it was developing.

11 Q Did there come a time when you had any  
12 discussions with Mr. Barnett about Whitewater?

13 A He was present on the airplane when the  
14 President talked to me briefly about Whitewater, and  
15 that's the time that Bob told the President that we  
16 need to keep Web out of this and so I got out of that  
17 conversation and they started having a conversation.  
18 He was on the same airplane in January of '94.

19 Q So this is the conversation where the  
20 President said to you --

21 A Can you believe Whitewater is still going  
22 on and he started to talk to me, and Bob says



1 Mr. President, Web needs to stay out of this, you all  
2 don't need to involve him because he's still at  
3 Justice. And I said fine, because the barbecue was  
4 hot and ready and I went to the back of the airplane  
5 and started eating barbecue. You think I'm kidding,  
6 but it was good barbecue.

7 Q Do you recall anything more about the  
8 substance of your conversation with Mr. Barnett about  
9 Whitewater?

10 A About Whitewater?

11 Q Yes.

12 A That was it.

13 Q Throughout this whole period?

14 A No, we were talking about the documents.  
15 We didn't talk about Whitewater. We talked about the  
16 documents.

17 Q You never had any discussions of any  
18 substance about Whitewater with Mr. Barnett?

19 A No, we just -- Bob -- everybody thought Bob  
20 was going to become a counsel, so we started working  
21 on getting the documents to Bob when a conflict arose  
22 involving his wife, and that's -- and then he started

1 talking to me about getting David Kendall employed,  
2 and ultimately when David was employed, Bob actually  
3 sat in on the meeting where I delivered some  
4 documents to David.

5 Q And do you recall anything about the  
6 substance of any conversations you had with  
7 Mr. Kendall about Whitewater?

8 A No. I was talking about the documents. I  
9 wasn't talking about Whitewater, other than here are  
10 some Whitewater documents, here are some Madison  
11 documents, what time do you want to come to my house  
12 and pick up the boxes. And specifically we talked  
13 about the need to keep the privacy of the documents I  
14 was delivering to him. And we had a luncheon meeting  
15 on that.

16 Q Let me show you another document bearing  
17 Bates numbers DOJ 11852, direct your attention to the  
18 message pad with Jim Lyons, this is the one on March  
19 15.

20 (Witness reviewed the document.)

21 A Okay.

22 Q This is the message pad that indicates

1 covert action re: Justice interaction and --

2 A I can't read my own handwriting. What's  
3 that word?

4 MR. FISHMAN: Off the record for a second.  
5 (Discussion off the record.)

6 BY MR. GIUFFRA:

7 Q What is it, Mr. Hubbell?

8 MR. FISHMAN: I want the record to be clear  
9 Mr. Hubbell did not ask for anybody else's assistance  
10 from the department on this issue.

11 THE WITNESS: This is a memo -- these are  
12 the message pads that -- these are the little message  
13 slips I would get while I was assistant or special  
14 assistant to the Attorney General, and I would write  
15 on them, but that doesn't mean that this related to  
16 the conversation with Jim Lyons. This is a message  
17 from Jim Lyons. The message is -- this is my  
18 handwriting below, not my secretary's or my  
19 assistant's, saying "covert action, number one,  
20 Justice interaction with Studman and Rindskopf," and  
21 that dealt with an issue involving Admiral Studman,  
22 who was --

1 BY MR. GIUFFRA:

2 Q CIA?

3 A Or NSA, I believe, CIA or NSA, and had  
4 nothing to do with Jim Lyons.

5 I'm not sure I'm at liberty to talk about  
6 that issue with this Committee.

7 Q Okay. Just wanted to clarify why there was  
8 discussion of --

9 A There wasn't.

10 Q -- Mr. Lyons.

11 A There wasn't. If you go through my pads, a  
12 lot of them on the back, you will see some  
13 scribbles. And you said I didn't take notes. That's  
14 the only way I took notes.

15 Q Let's talk about Betsey Wright. Did you  
16 have any discussions with Betsey Wright about  
17 Whitewater?

18 A I'm sure I have.

19 Q Do you have any recollection of any of  
20 those conversations?

21 A They would have started during the  
22 campaign. Betsey was the point person on the issues

1 involving the press that were called -- let me see  
2 the right way to put it.

3 Betsey dealt with the press a lot on issues  
4 that dealt with state issues because she had been the  
5 Chief of Staff with the President, for the governor,  
6 now President. So when we started getting questions  
7 regarding Madison and Whitewater, Betsey would have  
8 been one of the people who would be getting the  
9 inquiries and calling me.

10 She would tell me, for example, that I  
11 needed to sit down and visit with Loretta on this  
12 issue or can you get me information on this. Betsey  
13 is the likely person I would have called back to say  
14 Betsey, we can and can't tell you some issues  
15 involving the privilege.

16 So I would have talked to Betsey about  
17 those issues during the campaign. After the  
18 campaign, I didn't talk to Betsey about  
19 Madison/Whitewater -- I don't know that I ever -- I  
20 talked about Madison/Whitewater until Betsey -- I was  
21 deep into my problems and Betsey was reported to be  
22 being questioned by the Special Counsel as well and I

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1 would have just had a hope you're doing okay, Betsey  
2 type of call on those issues. I talked to Betsey on  
3 some other issues.

4 Q Do you know a man named Jeff Gerrish?

5 A Gerrish?

6 Q G-e-r-r-i-s-h.

7 A Jeff Gerrish?

8 Q G-e-r-r-i-s-h.

9 A That sounds familiar. The name sounds  
10 familiar. Gerrish & McCreary? What's that firm?  
11 Gerrish --

12 MS. SHORES: I don't know.

13 THE WITNESS: It's a law firm called  
14 Gerrish & McCreary --

15 BY MR. GIUFFRA:

16 Q Correct, in Kentucky, I believe.

17 A Kentucky?

18 Q This firm conducted an investigation  
19 involving Whitewater -- I mean involving Madison,  
20 excuse me. If you have no recollection, you have no  
21 recollection.

22 A I've seen it on a letterhead.

1 MS. SHORES: I have too.

2 THE WITNESS: Gerrish and -- were they the  
3 ones who I took the case off of? Yeah, they  
4 represented Madison. They represented Madison before  
5 me in the lawsuit against Frost, so that's who that  
6 is. Yes, I do remember Mr. Gerrish. He called me  
7 when we took over that case in 1989. I think they're  
8 in Memphis, though, not in Kentucky. Pretty good.

9 BY MR. GIUFFRA:

10 Q Do you know whether POM had a lending  
11 relationship with Madison?

12 A With Madison? I know my brother-in-law  
13 borrowed some money from Madison and he may have  
14 pledged some POM assets. I don't know. I don't  
15 think so, but it's possible. I know that he borrowed  
16 money on his house and I think he borrowed money on a  
17 warehouse that he owned personally, but he may have  
18 put the proceeds into POM, so I don't think POM did,  
19 but I think he did personally.

20 Q He put the proceeds of the loan from  
21 Madison into POM?

22 A Yeah.

1 Q Did you ever discuss POM with Mrs. Clinton?

2 A POM?

3 Q Yes.

4 A Yes.

5 Q What did you discuss with Mrs. Clinton  
6 about POM?

7 MR. KRAVITZ: Bob, how is this inside the  
8 Senate resolution that we're here to investigate?

9 MR. GIUFFRA: There's evidence before the  
10 Committee of funds going from Madison to POM so I  
11 would just like to find out some basic information  
12 about POM.

13 THE WITNESS: I think I would have talked  
14 to her when my in-laws brought POM. On occasion POM  
15 would be involved in litigation and she might help  
16 me. I think she actually signed some of the early  
17 pleadings in the lawsuit against Duncan on antitrust  
18 and patent violations. I would have consulted with  
19 her about that lawsuit because of her knowledge of  
20 certain intellectual property laws.

21 BY MR. GIUFFRA:

22 Q Did you ever speak to Mr. Ickes about POM?

1 A You know, I read that in the paper, and I  
2 don't believe I did, but I may have referred my  
3 brother-in-law to Mr. Ickes because I would have  
4 called somebody in New York to get a recommendation  
5 for a lawyer -- I know about POM's problems in  
6 New York, and so I would have called a friend of mine  
7 to ask for a recommendation and they may have given  
8 me Harold Ickes, and I may have called to introduce  
9 them, but I don't remember doing that.

10 Q Was Mrs. Clinton at all involved in that  
11 representation?

12 A That representation, no, no, but I know  
13 what the lawsuit -- I know what the fight was in  
14 New York. It wasn't a fight. They just wouldn't let  
15 them bid.

16 Q Just to make sure the Senate record is  
17 clear, you had conversations with Ms. Breslaw during  
18 the period when you worked in the Justice Department;  
19 is that correct?

20 A Yes, I did.

21 Q Did you ever discuss -- during the  
22 conversations you had with Ms. Breslaw during the

---

1 period you were in the Justice Department, did you  
2 ever discuss Madison?

3 A Yes.

4 Q What did you discuss about Madison?

5 A She -- I think she called me to say that  
6 she either was inquiring whether I remembered or to  
7 tell me that she didn't remember me disclosing, when  
8 we took on the Madison Frost litigation, our prior  
9 representation of Madison. I can't remember how the  
10 contact -- I think we swapped phone calls and I don't  
11 know who got who first.

12 Rick Donovan had alerted me to the fact  
13 that April -- there was an inquiry concerning the  
14 conflict issues and that April didn't remember a  
15 conversation that I thought we had about the  
16 conflict.

17 Q The fact that you had disclosed --

18 A Or the potential for conflict.

19 Q That you had disclosed the conflict to  
20 Ms. Breslaw?

21 A Yes.

22 Q When Ms. Breslaw spoke to you, was she at



1 all angry that you had not --

2 A No, it was a very quick but sociable  
3 conversation.

4 Q Did she indicate in any way that there were  
5 criminal referrals relating to Madison?

6 A No, she did not.

7 Q That she was involved with?

8 A She did not.

9 Q Let me direct your attention to the recusal  
10 of Paula Casey from matters involving Madison. What  
11 do you know about her decision to recuse herself from  
12 matters relating to the RTC criminal referral  
13 involving Madison?

14 A I remember at some point Phil Heymann  
15 telling me there was an issue as to whether she was  
16 recusing or not, and then I read in the paper that  
17 she had recused. I either read it or Phil told me,  
18 one way or the other, but I think I read in the  
19 paper.

20 Q Do you recall any other discussions you  
21 might have had with anyone about the recusal of Paula  
22 Casey from matters involving the Madison RTC

1 referral?

2 A You know, somebody may have been with Phil  
3 when he said it, it may have been Jack Keeney or may  
4 have been Dave Margolis, but it was just something  
5 like I wish your U.S. Attorney from Arkansas would  
6 recuse, and that would be all that was said.

7 Q Do you recall taking any action yourself  
8 with regard to that matter?

9 A Oh, no. There wouldn't be any for me to  
10 take, but I didn't.

11 Q And you never spoke to Ms. Casey about her  
12 recusal?

13 A No.

14 Q And you never spoke to anyone at the White  
15 House with regard to Ms. Casey's recusal?

16 A No.

17 Q Let me direct your attention to a loan or  
18 loans made by the Perry County Bank in connection  
19 with the 1990 Clinton gubernatorial campaign. Do you  
20 have any knowledge of those loans?

21 A Direct knowledge, no.

22 Q Have you ever discussed those loans with

1 Bruce Lindsey?

2 A No. When I read in the paper that Bruce  
3 was under investigation, I had a brief conversation  
4 where I said I hope you're doing okay, and that was  
5 it.

6 Q Have you ever had any discussions with  
7 anyone else about those loans?

8 MS. SHORES: I assume you're excluding  
9 various investigatory agencies.

10 BY MR. GIUFFRA:

11 Q Right.

12 A I've been asked about them a lot. I have  
13 had no conversations with anybody who -- I mean with  
14 anything about the nature or the loans themselves.  
15 I've had conversations with several people who have  
16 appeared to be under investigation, more of a, again,  
17 I know what you're going through, hope you're doing  
18 okay type of conversation. I had that with several  
19 people who have been in the paper.

20 Q Did you discuss -- who were the persons you  
21 had such conversations with?

22 A Mr. Lindsey, Gloria Cabe. When I was in

1 Little Rock I saw Mr. Branscomb at a restaurant and  
2 we shook hands, and one of the lawyers for somebody  
3 else involved in that loan, I don't even know who he  
4 represents, named Tom Ray.

5 Q Did you ever discuss that loan with  
6 Mr. Lyons?

7 A Perry County loan, no. Can I -- I want to  
8 try to be complete.

9 Q Absolutely.

10 A I knew that the campaign had a debt after  
11 the election of '90, and so when the President was  
12 thinking about running for President, governor,  
13 then-governor, now President, was running, I knew  
14 that there was a debt. I didn't know where it was,  
15 but I knew that there were issues about trying to  
16 raise money to pay off that debt.

17 Q Do you recall anything further about the  
18 repayment of that debt?

19 A I remember it was paid off.

20 Q Did you have any involvement in the process  
21 by which the loan was paid off?

22 A Other than to sit in on some discussions

1 about that that had to be a separate fund-raising and  
2 it needed to be done, no.

3 Q Have you ever discussed any loans involving  
4 Flower Wood Farms with Mrs. Clinton?

5 A Who?

6 Q Flower Wood Farms.

7 A That's a new one on me, finally. I never  
8 heard of Flower Wood Farms. No.

9 Q Have you had any other discussions other  
10 than those you've testified to here today about the  
11 winding up of the Whitewater investment for the  
12 Clintons?

13 A Mr. Foster, I had discussions with.

14 Q Okay. Other than those conversations.

15 A The winding-up. My lawyers. All but -- I  
16 assume you're excluding all the investigators.

17 Q Yes.

18 A But the winding-up. I think for part of  
19 that conversation the Clintons' accountant was there  
20 at one of those, and besides Mr. Foster.

21 Q Was BCCI a client of the Rose Law Firm?

22 MR. KRAVITZ: Objection. Come on, Bob.

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1 MR. GIUFFRA: At the hearing last time  
2 there was a question as to why he recused himself  
3 from BCCI.

4 MR. KRAVITZ: That doesn't mean it was  
5 within our resolution.

6 BY MR. GIUFFRA:

7 Q I just want to ask you, why did you recuse  
8 yourself from matters involving BCCI?

9 MR. KRAVITZ: Objection.

10 THE WITNESS: I can answer it real easy.

11 MR. GIUFFRA: Just answer the question.

12 MR. KRAVITZ: I don't think you should.

13 It's outside the resolution. I don't think you  
14 should get in the habit of answering questions --

15 MR. GIUFFRA: It's one question --

16 MR. KRAVITZ: I don't think we should get  
17 in the habit of answering questions outside the  
18 resolution simply because it's one question.

19 THE WITNESS: Do you want me to answer?

20 BY MR. GIUFFRA:

21 Q Just answer it.

22 A In the late 1970s our firm defended one of

1 the defendants in the financial general bank shares  
2 takeover litigation, and other defendants were  
3 Mr. Altman, Mr. Clifford and Garth Pharron and  
4 everybody else. We represented a company called  
5 Systematics in that litigation.

6 Ultimately our client was dismissed, but  
7 when BCCI came up at the Justice Department, I  
8 disclosed that to Mark Richard, and he said what a  
9 deal, you get out of BCCI, you should recuse. So  
10 that's why I recused on BCCI. Our firm did represent  
11 one of the initial defendants in the financial  
12 general bank shares takeover litigation called  
13 Systematic.

14 Q I'm trying to save you a question if you  
15 ever have to testify at public hearing.

16 A Okay.

17 MR. KRAVITZ: What a guy.

18 MS. SHORES: You're going to ask about  
19 Watergate; right?  
20 (Laughter.)

21 MR. KRAVITZ: Probably knows about as much  
22 about Watergate as he knows about this stuff.

1 BY MR. GIUFFRA:

2 Q During the 1980s, did the Rose Law Firm  
3 have a computer system that enabled a document to be  
4 dated as it was printed out?

5 MS. SHORES: What do you mean?

6 THE WITNESS: Yeah. If you typed it on the  
7 bottom.

8 BY MR. GIUFFRA:

9 Q Would the date of a document have to be  
10 typed in manually?

11 A I don't know.

12 Q Not something that was your concern?

13 A No.

14 Q We'll ask Ms. Huber that.

15 A She probably won't know either. I think  
16 the memo had a date. Most memos had dates that I've  
17 seen.

18 Q Have you ever discussed anything involving  
19 Madison/Whitewater with Jim Guy Tucker?

20 A No.

21 Q When did you first learn that Governor  
22 Tucker was under investigation in connection with

1 matters relating to Madison?

2 A I can't tell you if in that initial memo I  
3 saw Governor Tucker's name or not. I just can't tell  
4 you.

5 Q Do you think you might have?

6 A I might have. I just can't tell you  
7 whether I did or not. It wouldn't have surprised me.

8 Q But it would be your testimony you don't  
9 recall any reference in that initial memo to the  
10 Clintons?

11 A No, I don't, but I -- you know --

12 Q This is the urgent memo.

13 A Yeah.

14 Q Let me ask you a question about urgent  
15 memos. As far as you know, does the department  
16 maintain copies of all urgent memos?

17 A As far as I know?

18 Q Yes.

19 A I think they maintain copies of everything  
20 under the sun.

21 Q So that if you had seen such an urgent  
22 memo, presumably a copy of it would be retained by

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1 the Department of Justice somewhere?

2 A There is this mystery department called the  
3 Office of Executive Secretary that routes everything,  
4 okay, and what they do, I don't know, but I got a lot  
5 of memos. Now -- yeah. So that's what I know.

6 MR. GIUFFRA: One more second, sir.

7 THE WITNESS: I shouldn't say that about  
8 Justice Department.

9 (Pause.)

10 MR. GIUFFRA: Mr. Hubbell, thank you very  
11 much for your time. I have no further questions.

12 MR. KRAVITZ: Let's take a short break.

13 (Recess.)

14 (Mr. Giuffra left the deposition.)

15 EXAMINATION

16 BY MR. KRAVITZ:

17 Q On the record.

18 Mr. Hubbell, you testified previously that  
19 you first learned of criminal referrals in the  
20 Madison case in the late summer or early fall of  
21 1993; is that correct?

22 A That's correct.



1 Q Is it true, then, that up until that time,  
2 you were not aware of the fact that the RTC had made  
3 a criminal referral on the Madison case to the  
4 Department of Justice in early September 1992?

5 A That's correct.

6 Q And is it true, then, that from early  
7 September 1992 up until late summer or early fall of  
8 1993, you had no knowledge of the Justice  
9 Department's handling of the 1992 criminal referral  
10 in the Madison case?

11 A No, I did not.

12 Q And is it true, then, that during that time  
13 period, you took no action to affect the Justice  
14 Department's handling of the 1992 criminal referral  
15 in the Madison case?

16 A No, I had nothing to do with it, one way or  
17 the other. I didn't know it existed.

18 Q Do you know of any official of the Clinton  
19 Administration who took any action to affect the  
20 handling of -- or to affect negatively the handling  
21 of the 1992 criminal referral in the Madison case?

22 A No, I don't think anybody knew about it.

1 Q You were asked previously about  
2 Whitewater-related documents that you had in your  
3 possession from before the time that Mr. Clinton  
4 became President and that you then delivered to  
5 Mr. Kendall at Williams & Connolly in 1993 at some  
6 point after you recused yourself from the  
7 Madison/Whitewater matter.

8 Do you remember those questions?

9 A That's right. That's correct.

10 Q Were you holding those Whitewater-related  
11 documents in your capacity as Associate Attorney  
12 General?

13 A No, no.

14 Q In what capacity were you holding those  
15 Whitewater-related documents?

16 A Basically a custodian until I could deliver  
17 them to the appropriate person here in Washington.

18 Q Are you familiar with newspaper stories  
19 that have contained allegations that you spoke with  
20 Paula Casey on several occasions -- I think the  
21 number that may have been cited was seven -- relating  
22 to Whitewater, Madison, David Hale, CMS or other

1 related matters?

2 A I've seen those newspaper articles.

3 Q Is there any truth to any of those  
4 allegations contained in those articles?

5 A No. I asked people what they're talking  
6 about, and nobody seems to know, but I know I didn't  
7 talk to Paula Casey seven times.

8 Q Did you ever talk to Paula Casey?

9 A I don't remember ever talking to Paula  
10 until that day in December or January when she  
11 introduced herself to me.

12 MS. SHORES: That's '93?

13 THE WITNESS: Late '93 or early '94.

14 BY MR. KRAVITZ:

15 Q Before the time that Ms. Casey recused  
16 herself from the Madison and Hale cases, did you ever  
17 talk to her about the Madison case, about Whitewater,  
18 about David Hale?

19 A I never talked to her about those  
20 subjects. I don't remember ever talking to her. I  
21 mean you hate to say never, but -- because, you know,  
22 sure enough you met somewhere at a function or

1 something like that, but I don't remember ever  
2 meeting Paula until -- or talking to her until that  
3 time.

4 MR. KRAVITZ: Thank you. That's all I  
5 have.

6 THE WITNESS: I had one thing. You said  
7 was any member of the Clinton Administration  
8 involved. I know that some people don't think so.  
9 Phil Heymann was a member of the Clinton  
10 Administration, and starting at some time I assume  
11 that Phil and then at some time when Joanne Harris  
12 got appointed, that they had some involvement in the  
13 referrals to the criminal division. I just don't  
14 know when that was. I don't have any idea.

15 BY MR. KRAVITZ:

16 Q Well, maybe just so the record is clear  
17 then, let me rephrase the question this way.

18 To your knowledge, did any official of the  
19 Clinton Administration take any action to slow down  
20 or interfere with or otherwise obstruct -- or  
21 obstruct the proper handling by the Department of  
22 Justice or the FBI or any of the United States

1 Attorneys offices of any of the criminal referrals in  
2 the Madison case?

3 A No, they did not. I don't have any  
4 knowledge of it. What I was trying to correct was  
5 there are some people I like a lot who were members  
6 of the Administration who had ultimately got  
7 involved, that being Phil and Irv and others, but I  
8 don't know what they did, but to my knowledge, they  
9 didn't do anything to inhibit the investigation at  
10 all.

11 MR. KRAVITZ: Thank you.

12 (Whereupon, at 5:28 p.m., the deposition  
13 was concluded.)  
14  
15

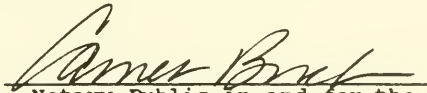
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16 WEBSTER L. HUBBELL  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer

before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires MARCH 14, 1998





**DEPOSITION OF IRA H. RAPHAELSON  
IN RE: S. RES. 120**

---

**THURSDAY, OCTOBER 26, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of IRA H. RAPHAELSON, called for examination pursuant to notice of deposition, at 2:20 p.m. in Room 124 of the Dirksen Senate Office Building, before MARY C. SIMONS, a Notary Public within and for the District of Columbia, when were present:

# APPEARANCES

LOUIS J. GICALE, Esq.  
 Majority Deputy Special Counsel  
 LANCE COLE, Esq.  
 Minority Deputy Special Counsel  
 ANDREW M. SCHAUER, Esq.  
 Minority Assistant Special Counsel  
 U.S. Senate  
 Committee on Banking, Housing, and Urban Affairs  
 534 Dirksen Building  
 Washington, DC 20510  
 On behalf of the Committee.

CHARLES J. SGRO, Esq.  
 U.S. Department of Justice  
 Tenth Street & Constitution Avenue, NW  
 Washington, DC 20530  
 On behalf of the Department of Justice.

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## 1 P R O C E E D I N G S

2 Whereupon,

3 IRA H. RAPHAELSON

4 having been first duly sworn by the Notary Public,  
5 was examined and testified as follows:

## 6 E X A M I N A T I O N

7 BY MR. GICALE:

8 Q Could you please state your name for the  
9 record.10 A Ira H. Raphaelson, R-a-p-h-a-e-l-s-o-n.  
11  
12

13 Q Your present business address.

14 A 2300 N, as in Nancy, Street, N.W.,  
15 Washington, D.C., 20037.

16 Q And where are you currently employed?

17 A I am a partner in the law firm of Shaw,  
18 Pittman, Potts & Trowbridge.19 Q How long have you been employed at that  
20 law firm?21 A I am not employed at the law firm. I am a  
22 partner at the law firm and have been a partner at

1 the law firm since I believe it's January 15th, it  
2 might be January 16th, of 1993.

3 Q Prior to going to that law firm on January  
4 15th, 1993 what was your position?

5 A As I say, I don't remember if it was the  
6 15th or the 16th, whatever the Monday was was my  
7 first day there, and whatever the previous Friday was  
8 was my last day at the Department of Justice. So  
9 whatever the date of the previous Friday. Prior to  
10 that time I was the Presidentially appointed Special  
11 Counsel for Financial Institutions Crime. I also  
12 served the roles of Counselor to the Attorney General  
13 and Special Counsel to the Deputy Attorney General.

14 Q And were you serving in those roles  
15 between August of 1992 and the time you left in  
16 January of 1993?

17 A Yes.

18 Q Who did you report to?

19 A William P. Barr was the Attorney General  
20 of the United States, and George J. Terwilliger, III  
21 was the Deputy Attorney General of the United States.  
22 I also reported to Congress by law.

1 MR. GICALE: Mr. Raphaelson, this  
2 deposition is being conducted pursuant to Senate  
3 Resolution 120. The Resolution establishes a Special  
4 Committee administered by the Banking Committee to  
5 conduct an investigation involved Whitewater  
6 Development Corporation, Madison Guaranty Savings and  
7 Loan Association, Capital Management Services, Inc.,  
8 the Arkansas Development Finance Authority and other  
9 related matters.

10 Section 1.B.2.(c). of Senate Resolution  
11 120 authorizes an investigation and public hearings  
12 into whether the Department of Justice has improperly  
13 handled RTC criminal referrals related to Madison  
14 Guaranty Savings and Loan Association or Whitewater  
15 Development Corporation.

16 This will be the focus of today's  
17 deposition.

18 You've been requested to testify before  
19 Committee. The deposition is being taken in advance  
20 of a public hearing which will occur in November, and  
21 there is a possibility that you may be requested to  
22 testify at that hearing.



1 We will be asking you a series of  
2 questions under oath. The stenographer will prepare  
3 a record of questions and answers, and the deposition  
4 will be treated as Committee Confidential until the  
5 commencement of the hearings.

6 Prior to the hearings you will receive a  
7 letter from the Committee telling you that you may  
8 come to the Senate to review a transcript of your  
9 deposition and make a note of any corrections in  
10 transcription on an errata sheet.

11 If you are called to testify at the public  
12 hearings you will be permitted to have a copy of your  
13 deposition transcript four days in advance of your  
14 testimony.

15 You may be represented by counsel.  
16 Objections to the form of questions will be noted for  
17 the record. Counsel may object on grounds of  
18 privilege or relevance. The Committee Chairman may  
19 rule on objections where the witness refuses to  
20 answer a question.

21 THE WITNESS: Are you done with your  
22 introductory statement?

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1 MR. GICALE: I am. Do you have any  
2 questions?

3 THE WITNESS: No. I would like to make an  
4 introductory statement.

5 MR. GICALE: Okay.

6 THE WITNESS: My introductory statement is  
7 this. I am advised that I have been called before  
8 this Committee staff as a witness on the matters that  
9 you indicated. I am appearing here without counsel,  
10 though I have no objection and I have given  
11 permission to the Justice Department to appear as an  
12 interested party and observer.

13 Prior to appearing here today and  
14 answering questions about the subject matter you've  
15 inquired into I have carried out what I believe to be  
16 my statutory responsibilities under the post  
17 government employment restrictions that I was advised  
18 of when I left government service. Those include  
19 making inquiry of the present Department of Justice  
20 in the person of Mr. Fishman, a representative of the  
21 Deputy Attorney General.

22 As to the Justice Department's desire for

1 me to testify before this Committee, it includes my  
2 making inquiry of Ken Starr, the Independent Counsel  
3 as to whether my testimony here would interfere with  
4 his investigation, and it includes an inquiry by me  
5 to the former Attorney General of the United States,  
6 William P. Barr as whether he had any objection on  
7 grounds of Executive Privilege or other privilege by  
8 virtue of my capacity as his counselor to my  
9 answering your questions.

10 I wish the record to reflect that Mr. Barr  
11 instructed me to make quite clear that he has no  
12 objection and wishes me to interpose no privilege  
13 objection to any inquiry relating to my official  
14 capacity.

15 Finally, I want the record to reflect that  
16 I am not represented here at these hearing, or at  
17 this deposition, and I will answer your questions to  
18 the best of my recollection.

19 MR. GICALE: Thank you.

20 BY MR. GICALE:

21 Q Now are you aware that the Committee has  
22 made a document request to the Department of Justice

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1 with respect to this matter?

2 A I read the newspapers.

3 Q Have you been asked to search for any  
4 records with respect to this matter, and do you have  
5 any?

6 A By who?

7 Q By the Department of Justice.

8 A No.

9 Q By anyone else?

10 A Yes.

11 Q Anyone with respect to this Committee?

12 A No.

13 Q Have you reviewed documents prior to  
14 appearing here today to testify?

15 A I have no reviewed documents in  
16 preparation of testimony here today.

17 Q Do you have in your possession, custody or  
18 control any documents that would be related to your  
19 testimony here today?

20 A Well since I don't know what my testimony  
21 is going to be, that's a very broad question.

22 Q Related to the matters that I outlined

1 earlier, and that would be Whitewater Development  
2 Corporation --

3 A I do not possess official Department of  
4 Justice records relating to the so-called Whitewater  
5 investigation.

6 Q Do you have any other records?

7 A I have loads of records.

8 Q With respect to Whitewater, Madison  
9 Guaranty, Capital Management Services, Inc., and the  
10 Arkansas Development Finance Authority.

11 A I don't know how broadly you want to  
12 construe relating to. I have copies, for instance,  
13 of my own calendars. To the extent that my own  
14 calendars might be construed as relating to something  
15 that the Committee is investigating that I'm unaware  
16 of, I can't answer a question that broadly. If  
17 you're asking me whether I have Department of Justice  
18 records relating to Whitewater, the answer is no.

19 Q Have you had an opportunity to speak to  
20 anyone who you know has been deposed before this  
21 Committee or who you know expects to be deposed  
22 before this Committee with respect to your testimony

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1 here today?

2 A No. I spoken to people who I know have  
3 been deposed and who I know will be deposed, but we  
4 have not discussed my testimony.

5 Q When did you first hearing of an RTC  
6 criminal referral relating to Madison Guaranty or  
7 Whitewater Development Corporation?

8 A I could not give you a specific date.

9 Q Do you recall whether or not you knew of  
10 this in September of 1992?

11 A I believe I did not know of a referral in  
12 September of 1992.

13 Q Well when you say you did not know of a  
14 referral, does that mean you did not see the  
15 referral, or did you have any information with  
16 respect to a criminal referral with respect to  
17 Madison Guaranty or Whitewater in September of 1992?

18 A I believe that in September of 1992 I had  
19 information that a criminal referral might exist.

20 Q And where did you obtain that information?

21 A From the Attorney General.

22 Q Were you aware of where that referral was

1 pending?

2 A I didn't know that a referral was pending.

3 Q Or that it might exist. Were you informed  
4 as to where it would be in existence and which U.S.  
5 Attorney's Office perhaps may have received it?

6 A I can't answer that question. I don't  
7 understand it, I'm sorry.

8 Q Well as a result of that information did  
9 you attempt to confirm that information of whether or  
10 not that indeed a referral existed in one of the U.S.  
11 Attorney's offices in the country?

12 A I didn't limit it to a U.S. Attorney's  
13 office, but I did attempt to inquire as to whether or  
14 not a referral had been made that involved Whitewater  
15 and/or Madison and/or the Clinton's, although I  
16 believe that my focus would have been directly on the  
17 Clinton's, that is that the information, to the best  
18 of my recollection, was that there had been an RTC  
19 referral that in some way related to the Clinton's  
20 and did I know anything about such a referral. I did  
21 not.

22 I then made inquiry as to whether such a

1 referral existed. Upon my first inquiry I was  
2 informed, to the best of my recollection, that no  
3 such referral existed.

4 Q Who did you make inquiry to?

5 A I made an inquiry to my contacts at the  
6 FBI, and I don't recall who I spoke with, though I  
7 can narrow who it might have been.

8 Q Who might it have been?

9 A I either would have spoken with Mr. Larry  
10 Potts, who was then the Assistant Director for the  
11 Criminal Division, his Assistant Director for White  
12 Collar, Fred Verinder, and there is a remote  
13 possibility that if neither of them was there that I  
14 might have spoken to Bill Esposito, who was at one  
15 point in time I guess the Group Manager under  
16 Verinder for Banking Crimes, but to the best of my  
17 recollection the conversation would have been either  
18 with Mr. Verinder or Mr. Potts.

19 Q After you inquired of them and they could  
20 not confirm the existence of this, when was the next  
21 time you either made an inquiry or learned of some  
22 information with respect to this existence of a

1 referral?

2 A Actually just to fix the time, I can't fix  
3 the time for you by the way squarely in September as  
4 being the time of my first inquiry. I might have  
5 heard something even in late August. So I cannot fix  
6 the time between August of September where I first  
7 was inquired of or I first made inquiry.

8 The second time I was inquired of could  
9 have been as little as 10 days later or it could have  
10 been as much as six weeks later, and I do not have  
11 any recollection of how much time elapsed, but there  
12 was a period of time that did elapse before there was  
13 a second inquiry made of me.

14 Q And as a result of the second inquiry did  
15 you again attempt to determine whether or not a  
16 referral existed?

17 A I did.

18 Q And what steps did you take at that point?

19 A I believe I recontacted the FBI, and I may  
20 have made an inquiry of the Executive Office for U.S.  
21 Attorneys since the Executive Office for U.S.  
22 Attorneys maintained a database relating to banking

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16

1 matters that I was supervising.

2 Q And as a result of that inquiry what did  
3 you find out?

4 A I don't know if it was as a result of that  
5 inquiry, the same day as the inquiry, a short time  
6 after the inquiry, but at some point in relation to  
7 the second inquiry, within a matter of hours or days,  
8 I became aware of the existence of a referral.

9 Q Where was this referral made?

10 A The referral had been made to the U.S.  
11 Attorney's Office in Little Rock, Arkansas.

12 Q Upon learning that the referral had been  
13 made to the U.S. Attorney's Office in Little Rock,  
14 what steps, if any, did you take to obtain more  
15 information with respect to the referral and the  
16 status of the referral?

17 A Well I should indicate to you that in both  
18 of my inquiries to the FBI and in connection with the  
19 EOUSA I made it clear to the people that I was  
20 inquiring of that there should be no expression of  
21 interest attributed to either the fourth or the fifth  
22 floors with regard to the potential referral.



1 The next step that I took was to inquire  
2 of the FBI as to where the referral was, that is  
3 could I see a copy of the referral since the system  
4 that was then in place was that FBI Headquarters was  
5 responsible for tracking through the Bank Unit all  
6 referrals in the country by banking agencies, and  
7 when I say banking that means banks, thrifts,  
8 international banks, national credit union regulated  
9 entities, the entire gamut of the financial  
10 institution crimes statutory responsibility. They  
11 had to track the referrals, they being the FBI.

12 I recall that they did not have a copy of  
13 the referral and, to the best of my recollection,  
14 there was an expression of concern over the delay in  
15 them receiving a notification of the existence of the  
16 referral.

17 Sometime closely related to those events,  
18 and I can't fix the order of this or the exact date,  
19 a late urgent report was received I believe at the  
20 Executive Office for U.S. Attorneys and that  
21 contained a copy of the referral.

22 Q Now I'm going to show you what is marked

1 for identification as Bates No. 17458. Would this be  
2 a copy of the late urgent report that you're  
3 referring to? It's dated October 7th from Lawrence  
4 McWhorter.

5 A Well this is not a copy of an urgent  
6 report. This is a copy of a memo from Mr. McWhorter  
7 who was the Director of the Executive Office for U.S.  
8 Attorneys to Messrs. Barr, Terwilliger and Budd, and  
9 it resembles, although I can't tell you to a moral  
10 certainty this is the cover sheet that accompanied  
11 it.

12 Q But if this occurred on October 7th, this  
13 would have been some time after your first inquiry?

14 A Yes. I've already indicated that,  
15 although, to the best of my recollection, October  
16 7th, 1992 Yom Kippur, and I would not have been at  
17 the Department of Justice on that day.

18 Q Now once you received a copy of the  
19 referral from the Executive Office for U.S. Attorneys  
20 what steps did you take to review those documents and  
21 discuss them with other Department employees?

22 A I reviewed the referral and discussed it

1 with the Attorney General of the United States. I  
2 may also have discussed it with Mr. Mueller and Mr.  
3 Terwilliger after discussing it with the Attorney  
4 General.

5 Upon receiving it I believe shortly within  
6 whatever short period of time elapsed after my  
7 receiving it I would have had conversations with  
8 either Mr. Potts or Mr. Verinder or both and  
9 representatives of the Executive Office for U.S.  
10 Attorneys to reiterate that there should be no  
11 expression of interest in the referral by the fourth  
12 or fifth floors and no action either on EOUSA's part  
13 or on the FBI's part which would result in  
14 interference with the ordinary course of handling the  
15 matter.

16 MR. SGRO: For the record, I think when  
17 the witness refers to the fourth and fifth floors he  
18 means the offices of the Deputy Attorney General and  
19 the Office of the Attorney General. Is that correct?

20 THE WITNESS: That would be correct.  
21  
22

1 BY MR. GICALE:

2 Q So your instructions were that this should  
3 be handled in the normal course of events?

4 A Those were my implicit instructions.

5 Q Now did there come a point in time when  
6 you had a meeting to discuss this with Mr. Mueller  
7 and representatives of the FBI, to discuss the  
8 referral and what investigatory steps might be taken?

9 A I'm aware of the existence of a memo that  
10 reflects a meeting between Mr. Mueller, Mr. Potts and  
11 myself where Mr. Mueller is attributed as having  
12 given that direction. I have no independent  
13 recollection of that particular meeting. I have no  
14 doubt that such a meeting occurred however.

15 Q Do you have any independent recollection  
16 of any other meetings where the referral may have  
17 been discussed or any other instructions given by you  
18 with respect to how it should be handled?

19 A Yes.

20 Q What is your recollection of other  
21 meetings?

22 A Again I can't fix dates, but I do recall

1 that there was a dispute between the Little Rock FBI  
2 and the Little Rock U.S. Attorney's Office about the  
3 ability of Little Rock FBI to review a box or boxes  
4 of purported supporting documentation for the  
5 referral, that is that the U.S. Attorney had denied  
6 the FBI access to that material in light of a 1991  
7 directive by the Deputy Attorney General relating to  
8 the role of FBI SACs in evaluating the investigative  
9 propriety or bona fides of referrals.

10 I recall discussing either with Mr. Potts  
11 or with Mr. Verinder or both the fact that the Little  
12 Rock U.S. Attorney's Office appeared to be out of  
13 compliance to the extent that they were denying the  
14 FBI access to that material.

15 Q Did you take any steps to ensure that they  
16 came back into compliance?

17 A I did not.

18 Q Do you know what happened as a result of  
19 your conversation with them or your indication to  
20 them that they were not in compliance?

21 A You're misstating my testimony, and I  
22 don't believe you're doing it intentionally. I did

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22

1 not indicate to the Little Rock U.S. Attorney Office  
2 that they were out of compliance. The FBI personnel  
3 who I was speaking with, Mr. Potts and Mr. Verinder,  
4 would have been aware in their own capacity that the  
5 Little Rock U.S. Attorney's Office was out of  
6 compliance. They would have also known that their  
7 SAC by not having access to that information was out  
8 of compliance.

9 Q But what steps were taken to resolve that  
10 dispute?

11 A To the best of my recollection, there was  
12 a teletype from Headquarters to Little Rock SAC  
13 advising him to carry out his responsibilities and,  
14 to the best of my knowledge, the SAC ultimately was  
15 given access by the U.S. Attorney's Office, that is  
16 the SAC obtained access for the FBI to the  
17 purportedly supporting documentation.

18 Q Now there came a point in time when --

19 A You've asked me to try and exhaust my  
20 recollection of meetings. Do you want me to finish  
21 that?

22 Q Well I want to reference a particular

1 point in time. There came a point in time when Mr.  
2 Banks wrote a letter to the Special Agent in charge,  
3 Mr. Pettus, and that would have been October 16th,  
4 1992.

5 This is marked as Bates No. 007051 and  
6 007052. Did you have an opportunity to review that  
7 letter, or did you receive a copy of that letter at  
8 some point in time?

9 A I have a recollection of having seen this  
10 letter at the time. I also recall having seen a copy  
11 of this letter in connection with Mr. Starr's  
12 inquiry.

13 Q Now prior to receiving that letter, to  
14 establish a point in time, and subsequent to this  
15 discussion with respect to the dispute over FBI  
16 access to the exhibits, are you aware of any other  
17 meetings that occurred with respect to the referral?

18 A Again, I'm having a difficult time fixing  
19 points in time. I know that I met with the Attorney  
20 General and the Attorney General met with others,  
21 including Mr. Terwilliger and Mr. Mueller, where  
22 certain directions were given by the Attorney

1 General. Among those directions were that there was  
2 to be no interference by my office in the handling of  
3 that referral, that there was to be no public  
4 dissemination of the fact of the referral, that there  
5 was to be no inquiry that could be misinterpreted as  
6 interference in the handling of that referral and  
7 that those instructions were relayed to the people  
8 that I had dealt with both in the FBI and in the  
9 Executive Office for U.S. Attorneys.

10 I further recall having discussions with  
11 people in the Executive Office for U.S. Attorneys,  
12 but I can't specifically identify which of several  
13 people it might have been, that I believed that the  
14 U.S. Attorney's Office in Little Rock had been out of  
15 compliance with the departmental policy regarding the  
16 requirements of filing timely urgent reports.

17 I recall further directing that there  
18 should not be a discussion between EOUSA and the  
19 Little Rock U.S. Attorney's Office which referenced  
20 my opinion in that regard, and there may have been  
21 one or two other discussions in that time frame, but  
22 I can't fix them in time.



1 Q So in terms of the Department of Justice,  
2 Main Justice people or EOUSA people you don't know  
3 who you gave these instructions to, one of a number  
4 of people?

5 A One of three people.

6 Q Who were those three people?

7 A It would have been Larry McWhorter, who  
8 was the Director of the Executive Office, Wayne Rich,  
9 was one of the Deputies, or Doug Frazier, who was the  
10 second of the Deputies or an Acting Deputy.

11 Q So these directions were conveyed to them,  
12 but they were also told not to convey these  
13 directions to the Little Rock U.S. Attorney's Office,  
14 correct?

15 A EOUSA is not in a position to direct  
16 investigations. EOUSA is in a position to advise  
17 U.S. Attorney's Offices concerning their compliance  
18 or non-compliance with policy. They were advised not  
19 -- they being EOUSA was advised not to advise Little  
20 Rock that I had opined on their compliance, or in  
21 this case non-compliance perceived by me with  
22 departmental policy.

1 I also became aware through Mr. McWhorter  
2 I believe, and again I can't fix the time frame, that  
3 Mac Dodson, who was then First Assistant in Little  
4 Rock, had opined that further investigation of the  
5 referral was warranted.

6 Q When you became aware of the fact that Mr.  
7 Dodson opined that further investigation was  
8 warranted, what did you do as a result of that  
9 recommendation?

10 A Well it wasn't a recommendation to me. It  
11 wasn't directed at me. I did nothing about that.

12 Q I'm showing you what is marked for  
13 identification as Bates No. 000510. This is a copy  
14 of the criminal referral dated September 1st, a cover  
15 letter dated September 1st, 1992, and again the first  
16 Bates number on the first page, the cover letter, is  
17 000510, and attached to it is the criminal referral  
18 from the RTC, C0004, and that is Bates number 000511  
19 through 531. Would this be a copy of the cover  
20 letter and referral that you reviewed at that point,  
21 in either August or September or October of 1992?

22 A Well since I won't purport to have a



1 photographic memory, I can testify that it appears to  
2 be a copy of the document that I reviewed at that  
3 time.

4 Q Did you form any opinions as to whether or  
5 not the matters alleged in this referral were matters  
6 that should be further investigated?

7 A I did.

8 Q And what was your opinion?

9 A My opinion was that there were steps that  
10 should be taken to follow up on the referral.

11 Q And what were the steps that you believed  
12 should have been taken to follow up on the referral?

13 A Well there was a whole series of steps  
14 that were theoretically possible, but at a bare  
15 minimum I believe that someone needed to speak to the  
16 referring agency and officials and review whatever  
17 documents they had.

18 Q However no instructions were given out by  
19 you to have that done; is that correct?

20 A Sir, I will indicate for the record that I  
21 did not carry out my statutory responsibility with  
22 regards to this referral at the direction of the

1 Attorney General of the United States. For me to  
2 have exercised the authority that Congress gave me  
3 prior to the election would have resulted in  
4 substantial criticism of me and the Department of  
5 Justice on the basis of alleged political  
6 interference.

7 The Department of Justice had just been  
8 through a two-year period of time wherein it had been  
9 severely criticized both for exercising too much  
10 oversight authority over the field and for exercising  
11 too little oversight authority over the field,  
12 sometimes in the same case.

13 Based on our assessment of both the media  
14 and Congressional atmosphere that the Justice  
15 Department was functioning in the Attorney General  
16 made a direction to me in which I thoroughly  
17 concurred that I take no action with regards to this  
18 referral prior to the election.

19 Q But at some point in time, assuming there  
20 was not an election, and I'm just asking you based on  
21 your experience in the financial fraud area, you had  
22 formed an opinion that there was a basis to take

1 further steps absent the circumstances surrounding  
2 this election, correct?

3 A Sir, I can no more divorce my evaluation  
4 from the election than I can from the atmosphere that  
5 the media and Congress created going back to the late  
6 '80s and early '90s. The fact is that Attorney  
7 General Dick Thornburgh had assured Congress that we  
8 would, that is the Justice Department would review  
9 every bank referral that had prosecutive merit. That  
10 was the commitment of the Attorney General of the  
11 United States.

12 When I was confirmed to my position I was  
13 asked about that commitment and reiterated it. It  
14 was part of my job. Based on my years as a field  
15 prosecutor, that is having investigated and  
16 prosecuted these types of cases, as well as related  
17 types of cases, it was my opinion that additional  
18 work needed to be done. Part of that was an on-the-  
19 merits evaluation, and part of that was a political  
20 with a small "p" evaluation based on the fact that  
21 Congress had certain expectations that these types of  
22 matters would be looked into. But looked into does

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1 not necessarily mean a full-blown criminal  
2 investigation with grand juries, grand jury subpoenas  
3 and FBI agent interviews. It does mean a measured  
4 professional response.

5 Q Now do you know whether this was ever  
6 looked into after the election prior to the time that  
7 you left the Department in January of 1993?

8 A Between the election and my leaving the  
9 Department I did not interfere in the handling of  
10 this particular referral because at that point in  
11 time the Attorney General concluded, and I concurred,  
12 that should I take any steps that it would have the  
13 appearance of either a political vendetta or sour  
14 grapes. I believed that whoever would replace me  
15 would read the statutory responsibilities that I had  
16 read and would take whatever action was appropriate  
17 with relation to oversight of the handling of the  
18 referral.

19 Q Do you recall any other meetings or  
20 discussions with respect to this referral that you  
21 have not related to us?

22 A Well I have a recollection of the letter

1 that you've put in front of me of October 16th and  
2 having discussions about that.

3 Q And what were the discussions with respect  
4 to that letter?

5 A I recall discussions I believe with the  
6 Attorney General and it may have also been with Mr.  
7 Mueller and Mr. Terwilliger, and for that matter I  
8 believe Mr. Potts and perhaps Mr. Verinder at  
9 different times. I can't give you a combination of  
10 people at the meetings, although I don't believe that  
11 the FBI would have been at the same meeting that I  
12 would have had with Mr. Barr.

13 The letter seemed to fly in the face of  
14 the information we had received from Mr. Dodson, and  
15 that while it was certainly a professionally  
16 defensible position to take that one would not  
17 initiate a public investigation of this referral  
18 prior to the election, the statements contained in  
19 the letter, which were tantamount to an accusation of  
20 political interference in the process, were both  
21 legally wrong, factually wrong and overly defensive  
22 in light of what we collectively perceived to be the

1 mishandling of that office's obligations to the  
2 United States.

3 Q Were you working in the Department when  
4 Mr. Banks indicated that he wanted to be recused from  
5 the case, that he or his office wanted to be recused  
6 from the case?

7 A I do not believe I was in the office when  
8 Mr. Banks asked to be recused. I'm sure if you've  
9 got a letter that has a date though that predates  
10 January 13th I was there.

11 Q I'm not talking about a letter. Did you  
12 have any conversations with Mr. Frazier or Mr. Banks  
13 about a potential recusal?

14 A I did not speak to Mr. Banks about this  
15 issue, and the only recusal discussions that I recall  
16 having relate to the formulation and adoption of the  
17 Justice Department's revised recusal policy, which by  
18 the way substantially predated this, that is the  
19 discussions began predating this. The policy itself  
20 I believe was finalized sometime in the fall. So  
21 that could have been September, October or November,  
22 and that, too, is known. It's a blue sheet which I

1 initialed and which has Mr. Terwilliger's name on it.

2 Q Are there any other meetings or  
3 discussions with respect to this referral that you  
4 can recall occurring between the time it was received  
5 by the Department of Justice and the time that you  
6 left the Department?

7 A I have no specific recollection of a  
8 conversation.

9 MR. GICALE: I have nothing further at  
10 this point.

11 MR. COLE: Mr. Raphaelson, as I indicated  
12 to you before we went on the record, my name is Lance  
13 Cole, and I'm a member of the Minority staff of the  
14 Special Committee, and I'm accompanied by Mr. Andy  
15 Schauer, who is also a member of the Minority staff.

16 I would like to ask you some follow-up  
17 questions in the same areas that Mr. Gicale just  
18 covered with you, and I'll try not to be redundant,  
19 although with two attorneys asking questions there  
20 necessarily will be some overlap.

21 Would you like to take a break before we  
22 start, or would you prefer to proceed and try to

1 conclude?

2 THE WITNESS: Let's go.

3 MR. COLE: I felt that might be your  
4 answer.

5 EXAMINATION

6 BY MR. COLE:

7 Q If I could direct your attention back to  
8 your previous testimony about your first knowledge of  
9 criminal referral involving Madison Guaranty Savings  
10 and Loan, am I correct in understanding that your  
11 recollection is that you heard of such a referral  
12 from the Attorney General, Mr. William Barr?

13 A I want to be very careful about the use of  
14 the word "knowledge." I became aware of the  
15 possibility of the existence of a referral from Mr.  
16 Barr.

17 Q What did Mr. Barr tell you?

18 A I do not recall the exact words Mr. Barr  
19 used. To the best of my recollection, Mr. Barr  
20 inquired of me whether I was familiar with a referral  
21 relating to the Clinton's and a bank, and he may have  
22 even named the bank, but I don't recall that, in



1 Little Rock or in Arkansas.

2 Q Did Mr. Barr indicate to you what was the  
3 source of his information on that matter?

4 A I don't believe I was ever told either in  
5 this first inquiry or in the second inquiry what  
6 source or sources he had that caused him to make the  
7 inquiry. I had a sense, whether from our first  
8 conversation or second conversation, and it is only a  
9 sense, that he had received an inquiry from senior  
10 RTC officials in Washington, but I do not know that,  
11 and I do not have a recollection of him saying that.

12 Q I think you already answered this, but do  
13 you have a basis for that impression that you can  
14 share with the Committee?

15 A It's the impression that I've carried with  
16 me from the time I first became aware that anyone  
17 would want to ask about these things. That's my best  
18 recollection.

19 Q I realize it's difficult to recall now  
20 over three years after the fact exact times, but I  
21 would like to try to pinpoint the time of your  
22 initial discussion with Mr. Barr as best we could.

1 You previously testified that you recalled  
2 receiving a copy of the criminal referral, the urgent  
3 report memorandum from the Executive Office for U.S.  
4 Attorneys, and that report is dated October 6th. Do  
5 you have a recollection as to how far in advance of  
6 your receipt of that memorandum your discussion with  
7 Mr. Barr took place?

8 A The first discussion?

9 Q Yes, the first discussion.

10 A No, sir, I do not.

11 Q Was it matter of days, weeks or months?

12 A I believe I've indicated, and my best  
13 recollection remains, that I had a discussion with  
14 Mr. Barr and it would have been in August or  
15 September, and that from 10 days to six weeks elapsed  
16 before I had a second discussion, and then from  
17 minutes to hours to days, but certainly no more than  
18 days between my second set of inquiries and the  
19 receipt of the referral elapsed. So that's the best  
20 time frame I can give you.

21 Q Did Mr. Barr direct you to make the  
22 inquiries that you subsequently made concerning the



1 existence of the criminal referral?

2 A Mr. Barr and I discussed the manner in  
3 which I would inquire.

4 Q Was anyone else present at that initial  
5 discussion with Mr. Barr?

6 A Not to the best of my recollection.

7 Q Are you aware of whether Mr. Barr asked  
8 anyone else to inquire about the criminal referral?

9 A I don't know that Mr. Barr didn't make an  
10 inquiry. I believe that he did not inquire through  
11 anyone else. Mr. Barr expressed on several  
12 occasions, including both those meetings, the  
13 necessity for absolute discretion, and he would not  
14 have had a very broad circle of people that he would  
15 have made that inquiry through.

16 I was in the best position of the senior  
17 officials in the Department to follow through on that  
18 inquiry. No one else he could have turned to would  
19 have been able to carry that out either as  
20 efficiently, accurately or with as much discretion as  
21 I would have been able to.

22 Q And that was because of your position in

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1 the Department at that time?

2 A That was because of my position in the  
3 Department, although some might say it was also  
4 because of my winning personality.

5 Q What is the next thing you did after that  
6 discussion with Mr. Barr?

7 A Which discussion with Mr. Barr?

8 Q We're still talking about the first  
9 discussion you had with Mr. Barr.

10 A I made a phone call, or I may have had a  
11 meeting, but I had a discussion with either Mr. Potts  
12 or Mr. Verinder, and again there is a remote  
13 possibility that I had a discussion with Mr.  
14 Esposito, although I don't believe that to be the  
15 case.

16 Q Was that the discussion in which you were  
17 advised that the FBI had no record of such a  
18 referral?

19 A No. The discussion would have gone  
20 something to the effect of are you, that is was I  
21 inquiring of the FBI, are you personally aware of a  
22 referral involving the Clinton's, and the answer

1 would have been no. Is such a referral in the  
2 system? The answer would be I would be surprised it  
3 it's in the system and I don't know about it, but  
4 I'll check on it, and somebody checked on it. The  
5 conversation ends and somebody checks, and there is a  
6 subsequent phone call in which I'm informed no such  
7 referral.

8 Q And that phone call would have been from  
9 one of the individuals at the FBI that you've  
10 identified as best you can recall?

11 A Well, yes.

12 Q As best you can speculate today.

13 A Exactly, although again the follow-up  
14 phone call is more likely than not Potts or Verinder.

15 Q I believe you testified previously that  
16 you received a second inquiry regarding the referral?

17 A Inquiry has a very formal taint to it.

18 Q This is a question about the referral.  
19 I'm not trying to use pejorative terms.

20 A Mr. Barr in a second conversation said  
21 words to the effect of are you sure, and I followed  
22 up on it, and I told him how I was going to follow up

---

1 on it. First I told him how I was going to follow up  
2 on it, and then I followed up on it.

3 Q Did Mr. Barr indicate to you why he asked  
4 you if you were sure?

5 A Well I don't know if I assume at the time  
6 that he had had a second conversation with someone,  
7 or that he had had additional information, but Mr.  
8 Barr rarely asked me pointless questions. So I  
9 operated under the assumption that he had received  
10 additional information and inquired of me again.

11 Q Other than your assumption do you have any  
12 knowledge as to what information Mr. Barr had  
13 received?

14 A I do not have any knowledge.

15 Q At any time up to the present have you had  
16 any discussions with Mr. Barr or anyone else in which  
17 you've learned what information Mr. Barr had  
18 received?

19 A I have not discussed it with Mr. Barr or  
20 anyone else, and I do not have a recollection of him  
21 sharing it with me at the time, though he may very  
22 well have given me some basis for my vague sense that

1 it was an RTC official or I may have arrived at that  
2 vague sense on my own. I do not recall every word  
3 that he spoke to me in those meetings, nor did I  
4 write them down.

5 Q I understand. Other than the two  
6 inquiries that we've discussed and the two  
7 discussions you had with Mr. Barr that you've  
8 testified to, up to the time of your receipt of the  
9 memorandum from the Executive Office for U.S.  
10 Attorneys did you learn from any other sources of the  
11 existence of an RTC criminal referral involving the  
12 Clinton's?

13 A I can't fix in point of time my  
14 discussions with the FBI. So I may very well have  
15 learned from the FBI prior to learning of the  
16 incoming urgent report that a referral did in fact  
17 exist. So I cannot fix that for you in time. I do  
18 know that I discussed with Mr. Potts and perhaps also  
19 with Mr. Verinder the fact that the referral existed  
20 and that they had previously been unaware of it.

21 Q Other than discussions with officials of  
22 the FBI and the Executive Office for U.S. Attorneys

---

1 and Mr. Barr, did you have any discussions about an  
2 RTC criminal referral involving the Clinton's up  
3 until the time of the receipt of the urgent report  
4 memorandum?

5 A As I said, I may have discussed it with  
6 Mr. Mueller and Mr. Terwilliger. I saw Mr. Budd's  
7 name on there, and I don't recall having a discussion  
8 with Mr. Budd. I saw Mr. McNulty's name on there,  
9 and I don't recall having a discussion with Mr.  
10 McNulty.

11 Q But I take it you had no discussions with  
12 anyone outside the Department of Justice?

13 A I had no discussions with anyone outside  
14 the Department of Justice.

15 Q Are you aware of whether anyone else had  
16 any discussions on that subject within anyone outside  
17 the Department of Justice including, but not limited  
18 to the individuals you've identified?

19 A Anyone else is entirely too broad a  
20 question for me to speak to.

21 Q Anyone else employed by the Department of  
22 Justice or the Federal Bureau of Investigation.

1 A If anyone employed by the Department of  
2 Justice or the Federal Bureau of Investigation had  
3 spoken about this referral outside of the Department  
4 of Justice or FBI I have always assumed that we would  
5 have read about it in the newspapers, and I might  
6 very well still be in office awaiting the sunset next  
7 week.

8 Q I have to ask the question in any event.  
9 So that's a no I take it?

10 A That's a no. To my knowledge, no one in  
11 the Department spoke outside the Department, but that  
12 cannot in any way be a vouching on my part that such  
13 a discussion did not occur by any one of the other  
14 95,000 employees of the Department of Justice then  
15 employed. I have no idea how many are employed  
16 today.

17 MR. SGRO: Off the record.  
18 (Remarks off the record.)

19 MR. COLE: Let's go back on the record.

20 BY MR. COLE:

21 Q Mr. Raphaelson, in your earlier testimony  
22 here today you mentioned that in your discussion with

1 the FBI concerning an RTC criminal referral involving  
2 Madison Bank there was discussion of concern over the  
3 delay of the reporting of the referral to the Federal  
4 Bureau of Investigation. Am I correct that that's  
5 your recollection?

6 A My recollection is that there was a  
7 discussion about a delay by Little Rock FBI in  
8 reporting to FBI Headquarters.

9 Q What do you recall about those discussions  
10 starting with whom you discussed it?

11 A To the best of my recollection, I had a  
12 discussion with Mr. Potts or Mr. Verinder that one or  
13 both of them was unhappy about the fact that there  
14 had been a referral and that they had not been told  
15 of it even at the time of their initial inquiry at my  
16 request, and I have a vague recollection of being  
17 informed that Mr. Banks had directed the FBI SAC not  
18 to report it to Washington.

19 Q Do you know at the time you had those  
20 discussions how it was that the FBI had come to know  
21 of the existence of the referral?

22 A The FBI where?

1 Q The FBI Washington, although you're  
2 anticipating my next question, but the FBI officials  
3 with whom you discussed the delay in Washington and  
4 how it was they had come to know of the existence of  
5 the referral.

6 A I have a sense, but it cannot amount to  
7 knowledge that this is the sequence of events, but my  
8 recollection is that at about the same time that I  
9 became aware that a referral existed and that an  
10 urgent report would be on the way the FBI became  
11 aware that a referral existed.

12 Q The reason I ask, Mr. Raphaelson, and I'm  
13 not trying at all to be confusing on this point, but  
14 I am confused because, unfortunately, I don't have  
15 with me, but I'll state for the record that there has  
16 been produced to the Committee a copy of a letter  
17 from the Resolution Trust Corporation to the FBI, a  
18 Special Agent in charge in Little Rock, Mr. Pettus  
19 transmitting the referral. So I'm confused about the  
20 internal reporting process inside the FBI and the  
21 Department of Justice as to whether the FBI would  
22 have looked to its own office in Little Rock to

1 advise it of an RTC criminal referral or to the  
2 Department of Justice.

3 A If you want to ask the question I'll give  
4 you the answer.

5 Q The question is, and I suppose we could  
6 start with a very general question of what would be  
7 the normal procedure for the FBI Headquarters in  
8 Washington to be informed of an RTC criminal  
9 referral?

10 A The SAC or a designated senior official in  
11 the field office to the relevant group supervisor in  
12 the FBI Headquarters. The FBI Headquarters had  
13 assumed the responsibility, by law mine, for tracking  
14 criminal referrals. They had the computer system and  
15 budget allocation to do it, and we relied on them to  
16 do it. The FBI SACs understood that they were  
17 supposed to report, or their so-called FIF, financial  
18 institution fraud coordinators were supposed to  
19 report to the Bank Crimes Unit in Washington the  
20 existence of all referrals.

21 There is additionally a requirement within  
22 the FBI, as there is a requirement in the U.S.



1 Attorneys Manual for U.S. Attorneys to report hot,  
2 urgent sensitive matters to in the case of the FBI to  
3 FBI Headquarters and in the case of the Department of  
4 Justice and U.S. Attorneys to the Executive Office  
5 for U.S. Attorneys and the Deputy Attorney General.

6 Q So if I'm understanding you correctly,  
7 then there would have been two mechanisms by which a  
8 criminal referral would have made its way to  
9 Washington, one through the FBI to FBI Headquarters  
10 and one through the Justice Department, assuming that  
11 it was received by both the U.S. Attorney and the  
12 FBI?

13 A No. Your assumption is too limited.  
14 There are any number of ways that a criminal referral  
15 can find its way to Washington. Two of the required  
16 ways in which it's supposed to find its way to  
17 Washington for the Special Counsel to keep track of,  
18 or at least required at the time, was FBI to FBI  
19 Headquarters, and U.S. Attorney through FBI, or in  
20 the case of a hot case to EOUSA and the Deputy  
21 Attorney General.

22 Keep in mind that the Secret Service was

1 also involved at the time. The Secret Service was  
2 actively soliciting referrals directly from banking  
3 agencies and banking institutions. This was a source  
4 of ongoing turf dispute between the FBI and the  
5 Secret Service, and that in order to have the FBI  
6 tracking system work, a system which I endorsed as  
7 being the only practical mechanism for complying with  
8 the Congressional requirements, the Secret Service  
9 needed to coordinate with the FBI SACs on the matters  
10 that were referred to them.

11 In addition to those mechanisms, every  
12 head of every banking agency and I knew each other's  
13 names and phone numbers. The General Counsels and I  
14 spoke, we met through the Senior Interagency Group,  
15 and if any of those folks thought that a referral was  
16 not being handled in an appropriate fashion they  
17 could and did meet with me on behalf of the Attorney  
18 General and the Deputy Attorney General to discuss  
19 the handling of that matter. If they had an inquiry,  
20 that is any of those General Counsel's had an inquiry  
21 as to how a particular matter was being handled, that  
22 inquiry could also come to me.

1 Q Focusing solely on the Department of  
2 Justice and the Federal Bureau of Investigation, are  
3 there other required procedures for reporting a  
4 referral beyond the two that you've described?

5 I asked the question earlier and you said  
6 that there are many, and I understand there are many  
7 outside of the Department of Justice and FBI  
8 including the newspapers, but I'm focusing now on  
9 internal Department of Justice procedures.

10 A There is an memorandum of understanding  
11 among the banking agencies in the United States which  
12 allows the banking agencies to make us aware  
13 directly. The banking agencies could and did send  
14 copies of referrals to me from time to time. I did  
15 not receive a copy of this referral from the RTC.

16 Q I understand, and perhaps I'm not being  
17 clear in my question. I'm really only referring  
18 internally to the Department of Justice and the  
19 Federal Bureau of Investigation in terms of reporting  
20 to Washington and if we've exhausted the procedures.

21 A We've exhausted my recollection of the  
22 procedures.

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1 Q The urgent report mechanism through the  
2 Executive Office for U.S. Attorneys, I believe you  
3 said that was for hot, and I can't remember your  
4 exact words, significant matters.

5 A Sensitive matters.

6 Q Sensitive matters. So that would be  
7 discretionary reporting based on the judgment of the  
8 local U.S. Attorney as to what would be the subject  
9 of that memorandum following Department of Justice  
10 guidelines?

11 A There is nothing discretionary about the  
12 blue sheet.

13 Q So there is no judgment involved in  
14 determining what's hot or sensitive, and I'm not  
15 suggesting that a criminal referral involving a  
16 Presidential candidate is not hot or sensitive. I'm  
17 just trying to understand Department of Justice  
18 procedures.

19 A There are instances where U.S. Attorneys  
20 may be accused of having displayed no judgment in  
21 their selection of what to report in an urgent  
22 report, but what is to be reported in an urgent

1 report is defined in the blue sheet and clearly  
2 understood by most U.S. Attorneys that I've talked to  
3 over the time I was associated with the Justice  
4 Department, which was roughly 1980 as an Assistant  
5 U.S. Attorney until 1993 when I left.

6 Q Were RTC criminal referrals normally the  
7 subject of blue sheet urgent report memoranda?

8 A From time to time RTC referrals were very  
9 much the subject of blue sheet reporting, as were  
10 disputes with the RTC involving RTC referrals. You  
11 can do a nexus search if you would like of criticisms  
12 by the various banking agencies in '89, '90 and '91  
13 of the manner in which certain referrals were being  
14 handled. Information relating to those referrals was  
15 routinely forwarded to Justice in the form of urgent  
16 reports or reports directly to my desk.

17 Q Other than the urgent report memoranda  
18 that we've been discussing involving the RTC criminal  
19 referral concerning Madison Guaranty Savings and  
20 Loan, do you recall any other urgent report memoranda  
21 that you received during your tenure from the U.S.  
22 Attorney's Office in the Eastern District of

1 Arkansas?

2 A I recall receiving a report --

3 Q And for the record perhaps if there are  
4 confidentiality concerns or 6C concerns, I'm  
5 obviously not interested in going into the substance.  
6 I'm just trying to get a sense of numbers in very  
7 general terms.

8 A Don't worry, I'm very much aware of my 6C  
9 obligations. I won't. I have a recollection of a  
10 report from Little Rock relating to the loss of the  
11 MacDougall case. In connection with my functioning  
12 as Special Counsel from time to time Congressional  
13 inquiries would come as to why we had won and why we  
14 had lost and why it was that every banker in America  
15 hadn't been indicted. Our answer to why every banker  
16 in America hadn't been indicated was that not every  
17 banker in America had committed a crime, and from  
18 time to time we need to provide anecdotal  
19 explanations.

20 The larger cases, that is the more press  
21 worthy or significant cases are those that related to  
22 the larger size failures that were the subject of

1 particularized review by me. So when MacDougall was  
2 lost it appeared on our statistical sheets which were  
3 reported to Congress.

4 There was a follow-up inquiry that was  
5 made in the ordinary course of what happened in the  
6 case, and I do have a vague recollection of receiving  
7 a report from the Little Rock U.S. Attorney's Office  
8 concerning the first loss. That's the closest thing  
9 I can recall to something that resembles an urgent  
10 report from Little Rock.

11 I also have a recollection that the Little  
12 Rock U.S. Attorney's Office at some point may have  
13 requested additional resources. At one point in my  
14 service I was responsible for allocating some of the  
15 Crime Control Act monies to particular U.S. Attorneys  
16 Offices. So I may very well have received a report  
17 from Little Rock, as I did from many U.S. Attorney's  
18 Offices concerning how much work they had and how  
19 busy they were and how nice it would be to have some  
20 slots.

21 Q The report that you just referred to  
22 concerning the MacDougall acquittal that you recalled

1 receiving from the Little Rock U.S. Attorney's  
2 Office, was that a blue sheet urgent report  
3 memorandum from the Executive Office for U.S.  
4 Attorneys?

5 A It may very well have been received in  
6 response to a directive from the U.S. Attorney's  
7 Office on such a format. It was not requested as an  
8 urgent report, though it could have very well been  
9 interpreted that way. Since the chances are the way  
10 the information was solicited was in response or in  
11 preparation for some report or another, I would have  
12 called the Executive Office for U.S. Attorneys and  
13 said find out why we lost the following case or  
14 cases, and they would have sent out a teletype worded  
15 however they sent it out.

16 Q So am I correct in understanding then that  
17 the urgent report memorandum concerning the Madison  
18 Guaranty criminal referral is the only blue sheet  
19 urgent report memorandum that you recall receiving  
20 during your tenure?

21 A No, sir. I received many blue sheet --

22 Q From the Little Rock U.S. Attorney's



1 Office.

2 A From the Little Rock U.S. Attorney's  
3 Office it's the only one I recall seeing. It wasn't  
4 sent to me.

5 Q Did you ever come to have any knowledge as  
6 to why the Little Rock office of the FBI had not  
7 reported the Madison Guaranty criminal referral  
8 immediately to FBI Headquarters in Washington as I  
9 believe you testified procedure required?

10 A I have a vague recollection of being  
11 informed that Mr. Banks had directed the SAC not to  
12 do it.

13 Q And what do you recall about being  
14 informed, beginning with who informed you of that?

15 A It would have been Mr. Potts or Mr.  
16 Verinder, and you have exhausted my recollection.

17 Q Did you take any action to follow up on  
18 that information?

19 A I don't know how I would have gone about  
20 doing that without violating Mr. Barr's direction.  
21 So the answer is no.

22 Q Did you report it to Mr. Barr?

---

1 A Yes, I did.

2 Q And what did he say?

3 A I do not recall Mr. Barr's exact words,  
4 but he expressed displeasure. Mr. Barr took very  
5 seriously his obligations as Attorney General,  
6 including the then pending Independent Counsel Law,  
7 and the fact that Mr. Banks was attributed as having  
8 made a calculation to withhold that information from  
9 the FBI and thus from the Attorney General interfered  
10 with the Attorney General's ability to perform his  
11 function.

12 Q What is the basis for your understanding  
13 that Mr. Banks calculated, as I think you words were,  
14 withholding that information from the FBI because of  
15 the then pending Independent Counsel Law?

16 A I didn't say that.

17 Q Please repeat your understanding  
18 concerning Mr. Banks' calculation.

19 A I don't know Mr. Banks' calculation is.  
20 I've never discussed it with him.

21 Q If you would like we can have the reporter  
22 read it back, but all I'm trying to do is understand



1 the basis for the statement you just made concerning  
2 Mr. Banks' actions.

3 A Mr. Barr was concerned that Mr. Banks had  
4 made a calculation not to report it. We based that  
5 discussion on two facts. One, that he had received  
6 it a month or more prior to reporting it as an urgent  
7 report and, two, the hearsay from the FBI that Mr.  
8 Banks had directed the SAC not to inform FBI  
9 Headquarters through its ordinary channels.

10 Based on those two facts, though I do not  
11 recall the precise words that were used by either of  
12 us, we speculated and discussed the fact that Mr.  
13 Banks had deprived Mr. Barr of his ability to perform  
14 his obligations with regards to the Independent  
15 Counsel Law. We did not attribute that to Mr. Banks'  
16 motivation. We were simply discussing the  
17 consequence of Mr. Banks' action.

18 Q And if you could describe how Mr. Banks'  
19 action, irrespective of what his motivations might  
20 have been, deprived Mr. Barr from exercising his  
21 responsibilities under the Independent Counsel Law.

22 A You need more than one law to take a look

1 at it. For one thing, the authority to enforce the  
2 laws of the United States belongs to the Attorney  
3 General period. The things that flow from that  
4 include United States Attorneys. Congress inserted  
5 me into the mix by creating a statute with specific  
6 statutory obligations that included ensuring that  
7 adequate resources were devoted to particular matters  
8 including those involving executives of institutions  
9 and executives in government. Based on that specific  
10 statutory responsibility assigned by Congress to the  
11 Special Counsel there was a flow-through obligation  
12 to the Attorney General to ensure the adequacy of  
13 resources devoted to particular matters.

14 In this particular matter one could do a  
15 calculus as to whether or not the political conflict  
16 of interest trigger in the Independent Counsel Law  
17 would have required or given Mr. Barr the discretion  
18 to avoid an appearance of impropriety to seek the  
19 appointment of an Independent Counsel to evaluate  
20 that particular referral, which I've now been shown  
21 and which I had seen at the time.

22 By Mr. Banks withholding that information

1 from the appropriate decision-making authorities he  
2 was interfering with the obligations of the Attorney  
3 General under the law and exposing the Attorney  
4 General to potentially severe criticism regarding the  
5 performance of his obligations vis-a-vis the  
6 Independent Counsel Law.

7         You also need to put in context the fact  
8 that Mr. Barr was already the subject of severe  
9 criticism for his interpretations of the Independent  
10 Counsel Law by the then Democratic majority Congress  
11 with relation to the handling of certain banking  
12 matters and the INSLAW case. We were keenly aware of  
13 that statute and keenly aware of his obligations.

14         My functioning in my position was entirely  
15 dependent on the U.S. Attorneys conducting themselves  
16 in a manner consistent with the law that Congress had  
17 passed. I spoke to the U.S. Attorneys both directly  
18 at the U.S. Attorneys Conferences and through the  
19 Attorney General's Advisory committee on the  
20 importance of keeping me personally informed so that  
21 I might best defend them from wrongful accusations on  
22 the Hill or by the media.

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1         Q     Thank you for that clarification, but my  
2 question really went to timing since the urgent  
3 report memorandum with the criminal referral was  
4 received in Washington on October 7th of '92. My  
5 question was with that timing in mind whether that  
6 had any effect on Mr. Barr's ability to exercise his  
7 responsibilities?

8         A     It would have been very difficult for Mr.  
9 Barr politically to seek the appointment of an  
10 Independent Counsel three or four weeks before a  
11 Presidential election without being subject to  
12 incredible criticism.

13         Q     Would it have been easier for him to have  
14 done so five or six weeks before a Presidential  
15 election?

16         A     Obviously the closer in time one gets the  
17 more difficult it becomes.

18         Q     But is it your testimony that it was your  
19 understanding at the time that a difference of two or  
20 three weeks was significant in that regard?

21         A     No. It was my understanding at the time  
22 that it wasn't Mr. Banks' function to make that

1 calculation.

2 Q That's not my question. My question  
3 really only goes, as I said, to the timing as to  
4 whether that affected Mr. Barr's ability to exercise  
5 his responsibilities.

6 A My answer would be yes. You could ask Mr.  
7 Barr as to his evaluation.

8 Q Other than what you've already testified  
9 to today, do you have any knowledge of how the  
10 criminal referral came to be transmitted to the  
11 Executive Office for U.S. Attorneys by the Little  
12 Rock office?

13 A I have a vague recollection of a  
14 conversation perhaps with Mr. Rich where Mr. Rich  
15 related to me in advance of receipt of the urgent  
16 report that he had discussed the urgent report  
17 mechanism with someone in Little Rock, but I do not  
18 have a clear recollection of that conversation that I  
19 am confident that I can say that occurred before we  
20 got the urgent report as opposed to Mr. Rich relating  
21 to me the fact that he had clarified with Little Rock  
22 after receiving the urgent report their obligations

1 under the blue sheet. So to be directly responsive,  
2 it could be one or the other, and I can't fix it.

3 Q Understanding the concerns that you and  
4 Mr. Barr had concerning receipt of the criminal  
5 referral at Department of Justice Headquarters, do  
6 you have any direct knowledge that Mr. Banks  
7 intentionally failed to transmit that referral to  
8 Washington? Other than the timing of the receipt, do  
9 you have any knowledge that he intentionally failed  
10 to transmit the referral?

11 A Beyond the hearsay I described to you, no.

12 Q And that would be the hearsay from the FBI  
13 agents?

14 A Yes. And I suppose I have after acquired  
15 information, but not contemporaneous information.

16 Q And what is the after acquired information  
17 that you have?

18 A During the course of my interview by the  
19 Independent Counsel I was asked a question --

20 Q Well I think the Independent Counsel has  
21 asked us not to delve into the interviews that he has  
22 conducted, and we are respecting that as best we can.

1 A You've asked me a question and I've  
2 responded to it.

3 Q If I could perhaps frame the question  
4 differently. I don't want you to tell me anything  
5 that you learned from being questioned by the  
6 Independent Counsel. However, if there is  
7 information you had that was acquired after this time  
8 that was elicited by the Independent Counsel then I  
9 would like for you to share that with us. I think  
10 that's a distinction that you as a lawyer shouldn't  
11 have a problem with, but if you do we can go off the  
12 record and discuss it further.

13 A That's a distinction that I just  
14 absolutely can't understand. So I can't parse my  
15 recollection that fine.

16 MR. COLE: Why don't we go off the record  
17 for a minute.

18 (Discussion off the record.)

19 BY MR. COLE:

20 Q Mr. Raphaelson, my question was whether  
21 the after acquired information that you referred to  
22 was information that you learned from the questions

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1 that were asked of you by the Independent Counsel or  
2 alternatively was information that you learned  
3 independently and that the Independent Counsel  
4 elicited during their questions?

5 A I understand the distinction. Part of it  
6 is as a result of inquiry by them. So I will not  
7 respond to that part of your inquiry, but by  
8 necessity my answer is thus incomplete to your  
9 question.

10 Some of the after acquired information I  
11 received I believe came from reporters making  
12 inquiries in part at the urging, or reported urging  
13 of the Justice Department's spokesperson, Carl Stern.  
14 It was attributed by these reporters to Mr. Banks,  
15 one, that Mr. Banks had maintained that the  
16 Republican Administration in which I served had  
17 concurred, in his judgment, to decline the matter  
18 and, secondly, that Mr. Banks had believed that there  
19 was an act of interference in his handling of the  
20 matter by virtue of the inquiry as to the receipt of  
21 the referral. Those are the two after acquired bits  
22 of information.

1 I don't know those things because I  
2 didn't speak to Mr. Banks. I don't know those things  
3 because I didn't speak to the Justice Department, and  
4 I don't know who the reporters' sources are.

5 Q That's helpful. Thank you.

6 A And, by the way, I did tell the reporters  
7 that the premise of both of those statements, if  
8 made, were false.

9 Q If I could show a document that is marked  
10 No. 7128A. It's a copy that appears to have been  
11 copied with a post-it note with handwritten notations  
12 on it and it attaches the Executive Office for U.S.  
13 Attorneys urgent report memorandum that we have  
14 previously been discussing.

15 A Yes.

16 Q Do you recognize the handwriting on the  
17 post-it note on page 7128A?

18 A I do not.

19 Q I will show you another document that is  
20 numbered FBI 1062, which is a draft chronology with  
21 handwritten notations, and if I could, sir, I would  
22 like to direct your attention to the entry headed

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1 9/22/92 that reads: E-mail to Verinder from Kubic re  
2 Ira hears rumbling on case.

3 A Yes.

4 Q Do you have any knowledge as to what that  
5 entry might refer to?

6 A If you want me to draw a reasonable  
7 inference, my second call included a ratcheted down  
8 conversation at some point with Kubic, who was one of  
9 the supervisors in the Banking Unit, and he would  
10 have described to me the search that he undertook  
11 regarding receiving or not receiving the information.

12 Q I'm focusing on the portion that says Ira  
13 hears rumbling on case, and what I'm trying to  
14 determine is whether that could have been a reference  
15 to your discussions, and not necessarily that you  
16 would have identified the source of your discussions  
17 with the Attorney General.

18 A Yes, I presume that that's what that is,  
19 and I presume that either directly from me or from  
20 his superiors Kubic was tasked with looking, and  
21 Kubic is sending an E-mail follow-up to Verinder  
22 regarding the fact that I heard rumblings, and the



1 fact that they call it a case simply means that the  
2 FBI was making the same mistake that the media and  
3 Congress did in mixing up the difference between  
4 cases and referrals. But that would be my  
5 assumption, that Kubic is responding Verinder  
6 regarding that issue. But, no, that doesn't refresh  
7 my recollection that that's the date of any  
8 conversation.

9 Q And if you could help me a bit with the  
10 chronology, assuming that this does reference the  
11 discussion you had with Mr. Kubic in which you were  
12 asking him to check the FBI records. Would that have  
13 been after your first or second discussion with the  
14 Attorney General?

15 A As a matter of timing it could be either.

16 Q In looking at the dates that are given on  
17 this chronology and accepting them as accurate for  
18 the purposes of this questioning can you draw any  
19 conclusion as to which is more likely?

20 A No, sir, I can't.

21 Q But the fact that it occurs prior to the  
22 urgent report memorandum on October 7th is at least

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1 consistent with the timing of the discussions you had  
2 even though we can't narrow it down to which of the  
3 two discussions?

4 A That it is.

5 Q You testified earlier that after you  
6 received the referral you reviewed it and discussed  
7 it with the Attorney General.

8 A Yes.

9 Q What do you recall about that discussion?

10 A I gave him my opinion on the prosecutive  
11 merits or interpretations I made regarding that  
12 referral.

13 Q Before turning to those matters, was  
14 anyone else present at the meeting?

15 A Mr. Mueller or Mr. Terwilliger or both may  
16 have been there, or it may have been alone. I don't  
17 recall. It may have been a series of running  
18 conversations.

19 Q Did you give Mr. Barr a copy of the  
20 referral?

21 A I don't recall whether I did or I didn't.

22 Q Presumably his office, and whether he

1 received one personally is another question, but  
2 presumably his office received one from the Executive  
3 Office for U.S. Attorneys; is that correct?

4 A There are a lot of things you can presume  
5 from routing slips. Given the --

6 Q I thought I was doing pretty well drawing  
7 the distinction between him personally and his  
8 office, but --

9 A Well, no. Here is the problem. Mr. Levin  
10 functioned as Mr. Barr's Chief of Staff. It may very  
11 well have been Mr. Barr's decision upon being  
12 informed by me that the referral was coming in that  
13 not even Mr. Levin should be aware of or handle the  
14 referral. So the mere fact that it was routed in  
15 this fashion doesn't mean it ever got out of the  
16 Executive Office for U.S. Attorneys or the Executive  
17 Secretariat in this fashion or to this mailing list.

18 For instance, Mr. McNulty and Mr. Budd's  
19 names are on there. I don't know that they ever got  
20 it. In fact, I would tend to doubt it. My best  
21 guess, and I have a vague recollection that supports  
22 that guess, is that Mr. Barr would have had me track

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1 down who had received this and limited the number of  
2 copies, even to the point of my personally retrieving  
3 other copies.

4 Q So is it your testimony that you have a  
5 recollection that Mr. Barr ask you to do that?

6 A I have a vague recollection of that, yes.

7 Q And do you recall from whom you collected  
8 the copies?

9 A I believe I would have stopped them either  
10 down at the EOUSA or at the Executive Secretariat. I  
11 may have even picked them up off of people's desks.  
12 I do not recall.

13 Q Who to your knowledge, sir, other than  
14 yourself, actually received, physically received a  
15 copy of this urgent report memorandum then?

16 A Well obviously Mr. McWhorter did, and I  
17 know that Mr. Mueller and Mr. Terwilliger and myself  
18 read it. Again, I have a vague recollection that at  
19 least for some time Mr. Barr did not read it.

20 Q And when did Mr. Barr come to read it?

21 A I don't know that he came to read it. I  
22 just have a vague recollection that there was a

1 period of time where he made a conscious decision not  
2 to read it.

3 Q And I take it that's a conscious decision  
4 that he communicated to you and that's how you are  
5 aware of that fact?

6 A Yes. Again, that's a vague recollection,  
7 and that may have only occurred for a 24-hour period  
8 or it may have occurred for a two-hour period, but I  
9 have that recollection.

10 Q Why did Mr. Barr choose not to read it?

11 A There may have been a period of time when  
12 he wanted to consider the consequences of reading it  
13 or not reading it, but I don't know why. He didn't  
14 communicate that to me, or I don't have a  
15 recollection of him communicating that to me.

16 Q Do you have any knowledge one way or the  
17 other as to whether Mr. Barr ever actually read this  
18 criminal referral?

19 A I do not know, but I believe he did.

20 Q And what is the basis of that belief?

21 A I believe that he read it at some point.

22 Q In your presence, or discussed it with you

1 in manner that would lead you to believe he read it?

2 A Yes.

3 Q The latter?

4 A The latter.

5 Q We digressed for a moment, but you  
6 testified that after you read the referral you gave  
7 Mr. Barr your opinion on its merit. What did you  
8 tell Mr. Barr?

9 A I told Mr. Barr that it was an intriguing  
10 referral, that I would want to know why the RTC had  
11 chosen to characterize people in the manner they had  
12 chosen to characterize them and that the RTC was not  
13 usually known its referrals to draw the sorts of  
14 distinctions that I read as being drawn in the  
15 referral between witnesses and subjects.

16 The referral to me I opined was almost a  
17 more intriguing official corruption investigation  
18 than banking investigation, although as an official  
19 corruption investigation there would be more concern  
20 over the Statute of Limitations than as a banking  
21 investigation because the Congress had essentially  
22 doubled the period of the Statute of Limitations for

1 banking crimes, and I indicate that, in my view, it  
2 needed to be looked at responsibly, and that were it  
3 being handled in the ordinary course by me I would  
4 make inquiry of Little Rock as to how they were  
5 handling it and why they were handling it in the  
6 manner that they were handling it or not handling it.

7 Q But I believe you're previously testified  
8 that Mr. Barr directed you and you agreed with his  
9 direction that you should take no action with regard  
10 to the referral at that time; is that correct?

11 A That is correct.

12 Q Are you aware of whether the FBI took any  
13 action with regard to the referral?

14 A Beyond what I've already described with  
15 them trying to get a look at the documents, I believe  
16 at some point they did get a look at the documents, I  
17 do not know what the FBI did or didn't do.

18 Q You earlier in your previous testimony  
19 mentioned an FBI teletype that I believe is related  
20 to what you just described.

21 A Yes. I said I had a recollection of an  
22 FBI teletype.

1 Q If I could show you a document that is  
2 marked FBI 523 through 525, and if you would look at  
3 that and tell me whether that is the teletype you  
4 recall.

5 A It appears to be, that is the first two  
6 pages appear to be.

7 Q I understand, and the third page perhaps  
8 we could get to in a moment. Focusing on the first  
9 two pages, based on your experience in the Department  
10 of Justice, what is that teletype from FBI  
11 Headquarters Washington to FBI Little Rock directing  
12 FBI Little Rock to do?

13 A Their job.

14 Q But if you could expand upon that perhaps.

15 A FBI Headquarters is telling FBI Little  
16 Rock to carry out its responsibilities in determining  
17 what the basis for the referral is.

18 Q Is that directive from FBI Headquarters in  
19 Washington to FBI Little Rock consistent with the  
20 position that you and Mr. Barr had taken regarding  
21 this matter?

22 A It most definitely is.

1 Q So is it your testimony, sir, that what  
2 this memorandum does is direct the FBI to follow its  
3 normal practice in this kind of case?

4 A Yes, sir.

5 Q Is it normally the case that a memorandum  
6 from the Director of the FBI in Washington goes to a  
7 field office on a specific RTC criminal referral?

8 A There are reams of teletypes from FBI  
9 Headquarters to FBI field offices that I caused the  
10 initiation of to cause U.S. Attorneys and FBI  
11 officials to handle specific referrals in specific  
12 manners.

13 Q So is it your testimony that this is not  
14 an unusual teletype for those of us who are not as  
15 familiar as you are with internal FBI procedures?

16 A The precise wording of that teletype may  
17 be unusual from other teletypes. But the notion that  
18 a teletype will go out from Headquarters, my belief  
19 is that most teletypes from Headquarters are from the  
20 Director as opposed to from something else, but maybe  
21 not. I don't know. I do know that there are numbers  
22 of FBI teletypes, including from the Director,

1 telling field offices do you job.

2 Q So, in your view, this teletype is  
3 merely --

4 A The teletype is obviously not merely doing  
5 anything. The teletype goes beyond merely telling  
6 them to do their job. The teletype tells them to  
7 handle it in a sensitive manner. The teletype  
8 underscores the directions that Mr. Mueller and I  
9 gave the FBI, that they shouldn't anything to alert  
10 the press or the public to the fact that the FBI was  
11 doing any form of preliminary inquiry. But the mere  
12 fact that there was an election coming up was not a  
13 basis for the FBI not to do a preliminary assessment.

14 Q If I could direct your attention to the  
15 last paragraph of the second page of the document,  
16 and I'll read it into the record. "Little Rock is  
17 requesting to submit results of this limited  
18 investigation and anticipated investigative and  
19 prosecutive plans by COB -- which I read to be close  
20 of business -- 10/16/92 to FBI Headquarters.  
21 Attention Kevin Kendrick."

22 Did you or Mr. Mueller direct the FBI to



1 complete their preliminary investigation by that  
2 date?

3 A I do not believe either of us sent any  
4 deadlines.

5 Q Do you have any knowledge as to why that  
6 date is included in this memorandum?

7 A I do not, other than perhaps they were  
8 anxious to find out how the FBI was doing in making  
9 progress with getting access to the documents.

10 Q Am I correct, sir, in reading this --

11 A It is a one-week time frame.

12 Q I understand that, and my question is why  
13 the FBI needed to respond in one week as opposed to  
14 two weeks, 10 days or a month for that matter.

15 A I presume because there was a concern on  
16 the FBI's part, as I know there was a concern on our  
17 part, that there was improper political handling of  
18 the case going on in Little Rock.

19 Q And this memorandum directs the FBI in  
20 Little Rock to make a recommendation concerning  
21 investigation of this matter as to whether or not  
22 further investigation is appropriate?

1 A Well the document says what it says. The  
2 way I would read this in Bureau speak is Headquarters  
3 wants to know whether the Little Rock FBI thinks  
4 there is anything to be done.

5 Q Do you know what the result of this  
6 teletype was?

7 A I do not.

8 Q Recognizing that you don't know what the  
9 result --

10 A Well actually I shouldn't say that. I do  
11 know that Mr. Pettus sent in his letter.

12 Q I'm sorry, are you referring to the letter  
13 from Mr. Banks to Mr. Pettus?

14 A I'm sorry, yes. Mr. Banks sent his letter  
15 to Mr. Pettus and Mr. Pettus sent it in.

16 Q Leaving aside Mr. Banks's letter for the  
17 moment, if the FBI in Little Rock had reported to the  
18 FBI Headquarters in Washington that further  
19 investigation of this matter should be undertaken,  
20 would you have been advised of that fact?

21 A Absolutely.

22 Q And if the FBI in Little Rock had

1 concluded the opposite, that no investigation was  
2 warranted, would you be advised in that case?

3 A Absolutely.

4 Q If I could show you another FBI memorandum  
5 dated October 16th, 1992 from FBI Little Rock to the  
6 Director of the FBI. It's a three-page document  
7 bearing numbers FBI 526 through 528, and if you  
8 haven't seen this document before, sir, take as much  
9 time as you would like to read it.

10 A Okay.

11 Q Sir, you used the term "Bureau speak"  
12 earlier, and that actually is why I was trying to get  
13 some help from you in interpreting these documents to  
14 make sure they're clear for the record.

15 Am I correct in reading this document as  
16 concluding that further investigation of this  
17 particular criminal referral is not appropriate in  
18 the view of FBI Little Rock?

19 A It is susceptible of that reading. It is  
20 susceptible of the reading that the U.S. Attorney had  
21 determined that he was not going to pursue, and so  
22 that the FBI was not going to, in Little Rock was not

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1 going to context that assessment. That, as you  
2 should know, is not the end of the issue.

3 A I'm sorry, I don't know what you mean by  
4 that.

5 A It is not merely the determination of the  
6 U.S. Attorney and the SAC as to whether any  
7 particular referral is investigated or not  
8 investigated. They're supposed to go back to the  
9 banking agency, and if the banking agency disagrees  
10 they can elevate it to my level. It was my statutory  
11 responsibility to determine whether or not the FBI  
12 and the U.S. Attorney in Little Rock were right or  
13 were not right.

14 Q Turning back to this particular FBI  
15 teletype, however, is there something in that  
16 teletype that leads you to believe here today that  
17 the FBI did not agree with U.S. Attorney's  
18 conclusion?

19 A The FBI Little Rock, no.

20 Q As I understood your answer before, you  
21 said it was susceptible to one reading, being that  
22 further investigation was not appropriate, and it was

1 susceptible to another reading that the FBI was  
2 merely concurring the U.S. Attorney's decision. My  
3 question to you is is there something specific in  
4 that memorandum that would lead you to believe that?

5 A There is nothing specific in this  
6 memorandum that leads me to believe that. It is  
7 based on my own reading of the sequence of events  
8 that the FBI SAC might very well have concluded that  
9 he was not going to contest the U.S. Attorney's  
10 position here. I did not know, and I was not going  
11 to make an inquiry prior to the election.

12 Q I'm not sure if I asked you this question.  
13 Had you previously seen this document at or about the  
14 time?

15 A I believe I did see a document like that  
16 at or about the time, yes.

17 Q I'm sorry, I'm confused because I asked  
18 you earlier if you had any knowledge of what  
19 conclusion the FBI reached after the first  
20 memorandum.

21 A I did not make a linkage between those two  
22 documents. I have recalled this particular document,

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1 which is FBI 00000526, as being the U.S. Attorney's  
2 as opposed to the FBI's view. But, yes, it can be  
3 read as being the FBI's view as well.

4 Q Before we discuss further the letter from  
5 Mr. Banks to Mr. Pettus that we've been referring to  
6 of October 16th, 1992, you stated in your earlier  
7 testimony to Mr. Gicale that you had some  
8 understanding that the U.S. Attorney in Little Rock  
9 had denied the FBI access to supporting documents on  
10 this referral; is that correct?

11 A Yes.

12 Q And that's the information that you  
13 obtained from what source?

14 A I believe I indicated I have a vague  
15 recollection that that was the case and that the  
16 source of that information was either Mr. Potts or  
17 Mr. Verinder.

18 Q And that's the discussion you testified to  
19 previously that you think you had with either Mr.  
20 Potts or Mr. Verinder about the U.S. Attorney's  
21 Office in Little Rock's compliance with the  
22 Department of Justice policies on providing

1 information to the FBI; am I correct?

2 A Yes.

3 Q Can you recall anything more specific as  
4 to what you were told by Mr. Potts or Mr. Verinder or  
5 anyone else in the FBI about the U.S. Attorney not  
6 providing the FBI access to the documents?

7 A No, other than the fact that it was a  
8 cause of dispute between them.

9 Q Not to be mysterious, and I'm just trying  
10 to understand the facts of what happened here because  
11 the documents that the Committee has received, and I  
12 regret that I don't have a copy of the document that  
13 I'm referring to with me, so be that as it may, there  
14 is a letter from the RTC to the FBI agent in Little  
15 Rock indicating that the referral was sent to the  
16 FBI. So I'm just confused about what was going on  
17 here.

18 A My understanding is that the referral  
19 itself went both to the FBI and to the U.S. Attorney,  
20 but that the evidentiary support, that is checks,  
21 check registers, bank documents, whatever may have  
22 been in a box or boxes that would have supported the

1 allegations in the referral, was sent to the U.S.  
2 Attorney's Office. You can't send the same records  
3 to two places. You can send multiple copies of a  
4 referral to multiple places. So my understanding was  
5 a referral and documents go to the U.S. Attorney, a  
6 referral goes to the FBI and the FBI is denied access  
7 to documents.

8 Q So these were original documents as  
9 opposed to copies of documents that would have been  
10 provided, because obviously it would be possible to  
11 send copies of documents to two places.

12 A I don't know whether they were originals  
13 or whether they were the only copy that the RTC was  
14 going to send. I don't know.

15 Q I don't want you to speculate.

16 Did Mr. Potts or Mr. Verinder tell you  
17 what the source of their understanding was concerning  
18 this issue pertaining to the documents accompanying  
19 the referral?

20 A I don't believe so, but I could be wrong  
21 about that, and if they hadn't I would have presumed  
22 that it was as a result of the conversation between

1 one or the other of them or some other senior  
2 official there in the Little Rock FBI office.

3 Q But you don't have any sense as to who in  
4 the Little Rock FBI office would have been the source  
5 of this information?

6 A No.

7 Q You testified briefly about a discussion  
8 you had with Mr. Dodson, or an understanding you had  
9 that Mr. Dodson had indicated that further  
10 investigation of this matter --

11 A I had no discussion with Mr. Dodson about  
12 this referral.

13 Q That's my question.

14 A I had no discussion with any Assistant  
15 U.S. Attorney in Little Rock about this referral.

16 Q What is the source then of your  
17 understanding that Mr. Dodson thought that further  
18 investigation was warranted?

19 A I believe it was from Mr. McWhorter, but  
20 it may have been in the form of a teletype and it may  
21 have been in the form of an E-mail. I've been shown  
22 a copy of an E-mail in a place that you don't want me

1 to talk about.

2 Q I'm about to show you a copy so we can  
3 probably skip over that. This document bears 7214, a  
4 Department of Justice number. Is this the E-mail  
5 that you recall?

6 A This is the E-mail I recall from my  
7 interview that you don't want me to talk about. I  
8 don't have a clear recollection of this E-mail at or  
9 about October 8th, 1992, though it plainly contains  
10 information supportive of my recollection.

11 Q So it's consistent with your recollection?

12 A That is correct.

13 Q Do you have any recollection as to whether  
14 apart from what is reflected in this E-mail you  
15 obtained any information about Mr. Dodson's views on  
16 this referral?

17 A As I say, my recollection is that I had a  
18 discussion with Mr. McWhorter.

19 Q Apart from this E-mail you think you had a  
20 discussion, because I thought you said it might have  
21 been a discussion or it might have been an E-mail,  
22 and what I'm asking you is if this helps you recall



1 whether it was more or less than the E-mail. I guess  
2 it couldn't be less.

3 A It doesn't help me whether it's more or  
4 less.

5 Q Do you recall discussing with anyone other  
6 than Mr. McWhorter what the views were of Mr. Dodson  
7 concerning the referral?

8 A I plainly would have relayed them to Mr.  
9 Barr and they would have colored my interpretation of  
10 the document you showed me earlier.

11 Q That document being?

12 A The teletype.

13 Q The FBI teletype?

14 A That's correct.

15 Q The second FBI teletype?

16 A That's correct. Mr. Dodson's view on or  
17 about October 8th of 1992 was that the referral  
18 merited further investigation. A surreptitious walk  
19 through the boxes would not be consistent with a  
20 first assistance expression that further  
21 investigation was warranted.

22 Q Understanding that, do you have any

1 understanding of what investigation Mr. Banks did  
2 before he prepared the October 16th letter that we  
3 previously referred to?

4 A My understanding is that Mr. Banks  
5 conducted no investigation.

6 Q What is the basis for that understanding?

7 A There is no investigation described in  
8 there, and I'm relating to you my understanding, and  
9 my understanding could have come from any number of  
10 sources, some after acquired including the media.

11 Q But do you have specific knowledge that  
12 Mr. Banks did not conduct any investigation before  
13 preparing this letter or direct anyone on his staff  
14 to conduct an investigation other than what you  
15 assume from reading this letter?

16 A I believe I know that no witnesses were  
17 interviewed. I believe I know from testimony, which  
18 is public record, that no discussion was had with the  
19 referring agency or its investigators. I believe I  
20 know that no documents that weren't supplied by the  
21 agency were obtained by the U.S. Attorney's Office  
22 because they couldn't have been if he in fact had

1 complied with his own statements in the October 16th  
2 letter of not issuing subpoenas. So I assume that  
3 the universe of what he had to look at was the  
4 referral and whatever documents that were attached to  
5 it, if any. So if you ask me what investigation did  
6 he conduct, my understanding is he conducted none.

7 Q Perhaps we should distinguish between the  
8 term investigation and review. You're not  
9 suggesting, as I understand your testimony, that Mr.  
10 Banks did not review the documents that were  
11 furnished by the RTC with the referral?

12 A I have no idea whether Mr. Banks  
13 personally reviewed those documents or whether he had  
14 the competence to do so.

15 By the way, for the record, I did have the  
16 competence to review those records, which is one of  
17 the reasons I was confirmed by the Senate for the  
18 position I maintained.

19 Q If I could direct your attention back to  
20 the October 9th, 1992 FBI memorandum that I  
21 previously showed you, the full paragraph on the  
22 second page. That directs that no overt

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1 investigation, such as witness interviews, should be  
2 conducted; is that correct?

3 A Right.

4 Q So what would the FBI have been expected  
5 to do in response to this memorandum other than  
6 review the documents that accompanied the referral?

7 A They would have been expected to go to Mr.  
8 Banks and tell him they wanted to see the documents,  
9 and I have inferred that Mr. Banks' October 16th  
10 letter is an over-reaction to that action.

11 Q That's your impression based on your  
12 reading of the letter and knowledge of the  
13 circumstances?

14 A The sequence of events, yes. No one was  
15 suggesting to Mr. Banks, including the FBI, that a  
16 public investigation take place at that point in  
17 time. It is a professionally defensible position to  
18 conduct no such investigation, but the record should  
19 also be clear that it is an equally professionally  
20 defensible position that politics and elections  
21 should in no way influence the actions of an United  
22 States Attorney's Office in investigating criminal

1 activity where they have predication to do so.

2 Q If I could ask you to take a moment and  
3 look at again at Mr. Banks' October 16 letter. Is  
4 there anything in that letter that refers to politics  
5 or elections at the national level?

6 A Absolutely. The last paragraph talks  
7 about November 3rd, 1992 and nothing prior to that  
8 date happening.

9 Q I'm not understanding your testimony  
10 because I'm confused. You were saying that U.S.  
11 Attorneys should not be influenced by a pending  
12 election, and yet I thought I understood --

13 A No, I didn't say that, but go ahead.

14 Q The distinction I'm making is what you  
15 described as the determination that you and Mr. Barr  
16 reached concerning this matter which was influenced  
17 by the pending election, as I understood your  
18 testimony.

19 A No, it was influenced more than by the  
20 pending election. It was influenced by the pending  
21 election and the media and Congressional circus that  
22 was then extant.

1 Q But among other things I think you  
2 testified that your view was that after the election  
3 if you had taken some action on this it could be  
4 referred to, your words were sour grapes or a  
5 vendetta.

6 A Absolutely.

7 Q So I'm not understanding the distinction  
8 between what you had Mr. Barr did and what Mr. Banks  
9 says in his letter here.

10 A The distinction is by being in Washington  
11 for better or worse I had been stripped of the  
12 objectivity that is associated with the criminal  
13 process in professional U.S. Attorney's Offices. I  
14 was thus open to wrongful accusations of political  
15 motivation. U.S. Attorneys, though clearly subject  
16 to such wrongful accusations, are supposed to make an  
17 evaluation of whether or not to proceed on a case on  
18 the merits. They may choose to factor in political  
19 circumstances, or they may choose not to do so, and  
20 my testimony was and is that both are equally  
21 defensible from a professional viewpoint.

22 MR. COLE: Fine. I was just trying to

1 clarify that point.

2 Let's go off the record a moment.

3 (Discussion off the record.)

4 THE WITNESS: I'm going to need to amplify  
5 an earlier answer, and I don't remember your precise  
6 question, but the subject is what I knew and why I  
7 formed my beliefs the way I did. It also would have  
8 been a factor, as reflected in OO7214, because I  
9 remember the phrase now having read it. This reads:  
10 Ira: Mac Dodson, First AUSA I think, called my folks  
11 on the 6th to say that he had been sitting on the  
12 referral for six weeks and wondered if he should let  
13 us know something. I recall being communicated to  
14 that Mr. Dodson had been sitting on the referral for  
15 six weeks.

16 BY MR. COLE:

17 Q And is that the discussion with Mr.  
18 McWhorter that you testified to previously?

19 A Again, whether by discussion, telex,  
20 teletype or otherwise, I was informed of that, and  
21 that would have informed my view of the propriety of  
22 the manner in which the matter was being handled.

1 Q I think I'm almost finished, but I did  
2 have a final question about the matter of this FBI  
3 teletype dated October 9th, '92. Do you know who  
4 directed, if anyone, in the Department of Justice  
5 that the FBI take this action?

6 A It could have very well have been me.

7 Q The reason I ask, and if I could point you  
8 back to the document that I showed you previously,  
9 1062, which is a chronology with a reference to a  
10 meeting on October 8th, and I didn't belabor that  
11 point with you because you testified that you had no  
12 recollection of that meeting.

13 A No. What I've testified to is I have no  
14 specific recollection of the meeting on the date  
15 reflected in a document which I've been shown. I  
16 have no reason to doubt that the document is accurate  
17 or that such a meeting took place.

18 Q But you don't recall the specifics of what  
19 occurred at this meeting?

20 A I don't recall precisely what was  
21 discussed there beyond having a profound sense that  
22 we would have directed that the case was handled in

1 the ordinary course.

2 Q My point being that the timing of the date  
3 of that meeting, if you accept what is in this FBI  
4 chronology, and the date of this teletype, which is  
5 also referenced in the chronology, would indicate  
6 that the teletype was sent after that meeting. So my  
7 question was do you recall whether you or someone  
8 else from the Department of Justice at that meeting  
9 directed that the teletype be sent?

10 A Well the dates make obvious that the  
11 teletype was sent after the meeting. I can't tell  
12 you that it was sent as a result of that meeting or  
13 as a result of an intervening conversation.

14 Q Well that's my question. Do you have any  
15 recollection of the FBI being directed by the  
16 Department of Justice to send a teletype or other  
17 direction to the Little Rock FBI office to follow up  
18 on this matter?

19 A I have no recollection of having directed  
20 the FBI to send any teletype to Little Rock. I have  
21 a strong recollection of directing the FBI to handle  
22 this in an ordinary and appropriate fashion without

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1 indicating that there was any interest by the fourth  
2 or fifth floor.

3 I further strong recall telling the FBI  
4 that the FBI had within its possession an order from  
5 the Deputy Attorney General giving them the authority  
6 to review referral matters that had been more than at  
7 that point a year and a half old, and that if they  
8 were being denied access to the documents  
9 Headquarters should encourage Little Rock to continue  
10 pressing for review of the documents if that's what  
11 Little Rock FBI thought was ordinary and appropriate.

12 Q But to be as clear as we possibly can, the  
13 specific directions in this memorandum and the  
14 specific date, including the October 16th date, are  
15 not something that you recall directing the FBI to  
16 do?

17 A Those are not things that I recall.  
18 Neither the language nor the date do I recall. I  
19 can't eliminate the possibility, but I do not recall  
20 it.

21 Q As to yourself or the other Department of  
22 Justice, separated from the FBI, representatives that



1 were present?

2 A Mr. Barr was giving no directions to the  
3 FBI in connection with this in my presence and was  
4 not discussing this with the FBI in my presence. Mr.  
5 Terwilliger was neither discussing nor giving  
6 directions in my presence. Mr. Mueller I knew had  
7 the same channels of communication that I did with  
8 the FBI and, to the best of my recollection, Mr.  
9 Mueller did not in my presence dictate the substance  
10 of that teletype nor did he set a time deadline,  
11 though I cannot eliminate the possibility of either.

12 Q The persons that are referenced in this  
13 FBI chronology as attending that meeting are shown to  
14 be yourself, Mr. Mueller, Verinder, Kubic, Dick and  
15 Kendrick. The last four individuals are FBI agents  
16 is my understanding.

17 A Well, Verinder, Kubic, Dick and Kendrick  
18 at all FBI officials. I presume that I'm the only  
19 Ira Raphaelson who was at the meeting, though they  
20 misspelled my name.

21 Q I've seen it spelled several ways in these  
22 documents.

1 A Many of them would be wrong then.

2 Q All but one I assume.

3 Mr. Mueller was head of the Criminal  
4 Division at that time; is that correct?

5 A He was the Assistant Attorney General for  
6 the Criminal Division.

7 Q So both you and Mr. Mueller were political  
8 appointees; is that correct?

9 A Yes, we were.

10 Q So there were no career Department of  
11 Justice officials present at this meeting?

12 A No career Justice Department officials of  
13 Main Justice were included in this information  
14 exchange. Leaks that were occurring at the time in  
15 the Justice Department were routinely being  
16 attributed to career officials.

17 Q So was there a conscious decision made not  
18 to share this information with any career officials?

19 A There was a conscious decision not to  
20 expand the circle of people who knew about the  
21 referral in Main Justice beyond the people that Mr.  
22 Barr specifically designated.

1 Q And those were?

2 A To my knowledge, Mr. Mueller, myself, Mr.  
3 Terwilliger, perhaps Mr. Levin, and at some point in  
4 time I may have been directed or felt I had authority  
5 to inform Mr. Urgenson, who had previously been head  
6 of the Fraud Section which oversaw Banking Crimes and  
7 at some point was the Deputy Assistant Attorney  
8 General to Mueller, but I do not believe that that  
9 conversation with Urgenson occurred in those initial  
10 days.

11 Q And what was the purpose of limiting it to  
12 those individuals, limiting access to the information  
13 to those individuals?

14 A The fewer number of people who know things  
15 the less likely it is that one of them picks up the  
16 phone and calls the reporters.

17 Q So, to the best of my knowledge, it was  
18 solely a matter of keeping the information  
19 confidential within the Justice Department?

20 A Absolutely.

21 Q Why did the FBI have four representatives  
22 at that meeting?

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1 A I couldn't begin to tell you.

2 Q Mr. Verinder I believe you testified was  
3 Mr. Potts' Assistant or Deputy? I don't know his  
4 title.

5 A He was the Deputy Assistant Director for  
6 White Collar.

7 Q Do you Mr. Kubic's title at the time?

8 A Yes. Kubic actually may have been the guy  
9 who replaced Esposito at that point in time. So my  
10 recollection as to Esposito being on the list may be  
11 completely wrong. Kubic I believe was the Unit Chief  
12 of the group that supervised Banking Crimes. Dick  
13 may have been a supervisor in that unit, or Kendrick  
14 was the supervisor. I believe Kendrick and Dick  
15 represented the next level down below Kubic as well  
16 as the person or persons who were in charge of the  
17 FBI computer.

18 So it may very well have been, if you're  
19 asking me to reconstruct things and speculate, it may  
20 very well have been that those four were the people  
21 who had been identified as having knowledge below Mr.  
22 Potts' level of the existence of the referral in

1 Washington and that a conscious decision had been  
2 made to bring them across the street so that they  
3 could be admonished by Mr. Mueller and I as to the  
4 need for absolute secrecy. That's my speculation.

5 Q So other than those four individuals and  
6 Mr. Potts, who else at the FBI had knowledge of this  
7 referral, to your knowledge?

8 A I don't know. You're talking FBI  
9 Headquarters?

10 Q Yes.

11 A I don't know. I would believe that Mr.  
12 Clark would know, but I do not know that. It is  
13 possible that Mr. Gow would know, though I don't know  
14 that.

15 Q And when you say "would know" you're  
16 speaking who would know of the referral?

17 A Would know of the referral, right.

18 Q Do you know whether Mr. Sessions was  
19 advised of this referral?

20 A He wasn't advised by us.

21 Q But do you know whether Mr. Potts or  
22 others advised him of it? I'm not asking you to

1 guess. I'm asking for direct knowledge.

2 A I do not recall. I may have known, but I  
3 don't recall right now.

4 Q Do you have reason to believe that perhaps  
5 he was informed of it?

6 A No. There's a possibility that he wasn't  
7 informed of it. I don't know.

8 Q Did Mr. Barr or anyone else in the Justice  
9 Department give any direction as to who in the FBI  
10 should be informed of this?

11 A At what point in time?

12 Q At the time of this meeting.

13 A Mr. Barr's instruction from the moment  
14 that we became aware of the existence of the referral  
15 was to keep the circle as small as possible and for  
16 me to personally ensure that everyone who was aware  
17 of it in Washington was aware that it had better not  
18 leak out. It remains a source of pride to me in the  
19 professionalism of our Justice Department at the time  
20 that it did not leak out.

21 Q In answer to my question you said at what  
22 time. Did that instruction change at a later time?

1 A What, that we should go ahead and leak?

2 No.

3 Q No. I asked you if Mr. Barr gave any  
4 instruction concerning the dissemination of this  
5 information inside the FBI, and you said to me at  
6 what time, and then you described what your  
7 understanding was at the time of this meeting. Did  
8 you have a different understanding at a different  
9 time?

10 A Over time we became less concerned with  
11 ordering the FBI not to do things or to do things in  
12 connection with this matter.

13 Q Was there a particular date when that  
14 concern changed?

15 A Well obviously after the election we  
16 reiterated to the FBI that there ought to be no leaks  
17 because we were going to be held as accountable for  
18 leaks after the election as we would have been for  
19 initiating a prosecution. It was of no small amount  
20 of awareness to me that my successor would be  
21 inheriting a problem much larger than I had been  
22 faced with with regards to Silverado, and my

1 successor would have to account or not account to  
2 Congress and the media for his or her handling of  
3 that particular referral. I would not need to  
4 account for it because it would be clear why I had  
5 done what I had done.

6 Q I think I have only one final question for  
7 you, Mr. Raphaelson.

8 Other than the persons we've discussed  
9 today at the FBI, both in Washington and in Little  
10 Rock and in the Department of Justice, and leaving  
11 aside the RTC which obviously knew of this referral  
12 since that was the source, do you have any other  
13 knowledge prior to the 1992 Presidential election of  
14 anyone having knowledge of this referral?

15 A I do not, other than presumably the  
16 referring official and his or her supervisory chain.

17 Q Which I intended to exclude in my  
18 question.

19 A I wasn't positive that you had done that.  
20 Within Washington I don't know who else would know.

21 Q And just to close the loop, do you have  
22 any reason to believe or suspect that this

1 information was known to others than those that we  
2 just discussed?

3 A No, I do not, other than obviously people  
4 in Little Rock.

5 MR. COLE: I have no further questions.

6 MR. GICALE: I have a few questions.

7 EXAMINATION

8 BY MR. GICALE:

9 Q Mr. Raphaelson, prior to assuming your  
10 responsibilities for financial institution fraud at  
11 the Justice Department in Washington what did you do  
12 at the Justice Department?

13 A Well I, unlike many Assistant U.S.  
14 Attorneys, considered the U.S. Attorney's Office to  
15 be part of the Justice Department. So I'll read the  
16 question that broadly. On December 15th, 1980 I  
17 became Assistant United States Attorney hired by a  
18 Carter appointee, who at the time was P. Sullivan. I  
19 was an Assistant United States Attorney from 1980  
20 until February of 1986 when I became a Deputy Chief  
21 for Official Corruption in the Chicago office.

22 Q Which district was that?

1 A For the Northern District of Illinois.  
2 Thereafter I became Chief of the Criminal Division,  
3 and then Chief of the Special Prosecutions Division  
4 in 1987. In 1989 I was named Co-First Assistant of  
5 that office. In December of 1989 I became First  
6 designated by the Attorney General and then court  
7 appointed U.S. Attorney in the interim period between  
8 the resignation of Mr. Tony Valukas and the  
9 confirmation of Fred Foreman as U.S. Attorney. When  
10 Mr. Foreman was confirmed as U.S. Attorney in late  
11 August of 1990 I resumed my position as Co-First  
12 Assistant and held that position -- I may have even  
13 held that position on paper as a detailee to Main  
14 Justice until the point of my confirmation, which was  
15 May of '91, but physically I had relocated to Main  
16 Justice in January of 1991 to assume the statutory  
17 position in an acting capacity.

18 Q Based on the various assignments you had  
19 at the U.S. Attorney's Office in the Northern  
20 District of Illinois, would it be safe to say that  
21 you had extensive experience with respect to  
22 reviewing financial institution fraud cases and



1 prosecuting them?

2 A I had personally investigated and tried  
3 bank fraud cases. I had supervised many bank fraud  
4 investigations. I ran the official Corruption Unit  
5 in Chicago from '86 on, which in a five-year period I  
6 believe achieved 400 convictions. I personally  
7 investigated and tried numerous official corruption  
8 cases. I was at the time I was brought to Washington  
9 one of the Department's most experienced white collar  
10 investigators and prosecutors, including bank  
11 referrals.

12 Q Now based on your experience and your  
13 review of this referral, what would you have  
14 considered a responsible way for the U.S. Attorney's  
15 Office and/or the Justice Department to carry out its  
16 responsibilities in handling this referral?

17 A I believe the Department of Justice  
18 carried out its responsibilities in a more than  
19 responsible fashion, as I've described to you. I  
20 also believe that the U.S. Attorney's Office can  
21 professionally defend not investigating in an overt  
22 manner prior to the election.

1 I described that in my view, and  
2 reasonable people can differ on this, reasonable  
3 prosecutors can and do differ on what investigative  
4 steps should be taken in any case or if they should  
5 be taken in a particular case, but in my view, and I  
6 preached this view publicly, it was the  
7 responsibility of the U.S. Attorney's Office to take  
8 serious referrals seriously, and if they chose not to  
9 follow up on them to make sure that the referring  
10 agency understood why so that the referring agency  
11 would have the opportunity, which Congress intended  
12 the banking agencies to have, to seek review in  
13 Washington.

14 That's the basis for my earlier testimony  
15 that at a bare minimum I would have wanted to look at  
16 the records that were attended to the referral and I  
17 would have wanted to find out from the referring  
18 agency what it was that stimulated them to make the  
19 referral in the first instance.

20 Q And what about the interview of witnesses?

21 A It may or may not have been justified.  
22 The referral may or may not have had a basis to

1 investigate. My antenna were up at a professional  
2 level. That is, I would have read this and I would  
3 have been intrigued and I would have wanted to know  
4 more. Wanting to know wouldn't have meant that I  
5 would have taken any particular investigative step  
6 after that though other than making inquiries of the  
7 referring people and getting as much information as I  
8 could in as unobtrusive a way as possible. If that  
9 information justified more obtrusive mechanisms for  
10 obtaining information I would have used those.

11 Q Well isn't it also your position that it  
12 would have been a responsible course of action for  
13 the U.S. Attorney in this case to have at least let  
14 the Attorney General know at an earlier point in time  
15 so that he could make some decisions?

16 A I'm sorry, I didn't understand to be  
17 covered by your question. I thought I had covered  
18 that earlier. I believe that the statement which is  
19 attributed to Mr. Dodson in that one document I was  
20 shown earlier is an absence of exercise of  
21 responsibility. Sitting on a referral of this type  
22 is not consistent with Department policy, and it is

1 not a responsible exercise of any level of discretion  
2 granted a line prosecutor, a line supervisor or an  
3 United States Attorney, if it is true.

4 Q If it is true in this instance. Well in  
5 any event you know that --

6 A I know that there is a delay.

7 A You did come to learn that there had been  
8 referral at some time and there was a delay.

9 A That is correct.

10 Q And I believe you also testified that the  
11 delay affected the Attorney General's ability to  
12 discharge his responsibilities with respect to  
13 whether an Independent Counsel should be --

14 A It affected a number of things. It  
15 affected my ability to responsibly respond to  
16 Congress or the media. I mean there is not a lot of  
17 mystery to this. Congress passed a law with very  
18 specific responsibilities in it, and I took those  
19 responsibilities seriously. I stepped back from  
20 carrying out those responsibilities in this case  
21 because of the political exigencies of the  
22 circumstance we were in.

1 Q Right, but on the part of the U.S.  
2 Attorney, his --

3 A His job was to allow me to choose whether  
4 to do my job or not. There were any number of times  
5 that I went to U.S. Attorney's Offices because I did  
6 not believe, an agency did not believe, or the FBI  
7 did not believe that referrals were referrals were  
8 receiving adequate treatment or resources.

9 Q Are you aware of an individual named Mark  
10 MacDougall in the Fraud section?

11 A I am aware by reading the newspapers that  
12 Mark MacDougall is an individual in the Fraud  
13 Section. I also have an awareness that Mark  
14 MacDougall did certain things from the newspapers,  
15 and I have an awareness based on questions that were  
16 asked of me by Mr. Starr's designees that Mr.  
17 MacDougall did certain things.

18 Q Have you ever seen Mr. MacDougall's  
19 memorandum of law with respect to this?

20 A I have been shown it by Mr. Starr's  
21 investigators.

22 MR. GICALE: Off the record for a second.

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1 (Discussion off the record.)

2 BY MR. GICALE:

3 Q Mr. Raphaelson, is there any other  
4 information that you believe is relevant to this  
5 inquiry that the Committee should be aware of?

6 A I have both heard and asked that  
7 particular question many times. It is an unfair  
8 question to the questioned individual. I have no  
9 idea what the Committee thinks is relevant or not  
10 relevant. I've responded to the best of my  
11 recollection to the matters that you have inquired  
12 on, and I think it would be safe to say that the  
13 hour's worth of questioning that was suggested to me  
14 would take place has more than covered the waterfront  
15 of what I've seen publicly discussed.

16 MR. GICALE: I have nothing further at  
17 this point.

18 EXAMINATION

19 BY MR. COLE:

20 Q I just want to move a few steps further  
21 down the waterfront and then I'll conclude and not  
22 dip too deeply into the water. I want to show you

1 one document, Mr. Raphaelson that is numbered  
2 Department of Justice 000500 through 505 and ask you  
3 if you recognize the handwriting on the first page of  
4 that document. It appears to read JCK, FYI, and then  
5 there is an initial and what appears to be a date of  
6 10/23.

7 A The 10/23, JCK, FYI and this circled  
8 scribble of an initial do strike me as I believe  
9 being Mr. Mueller's, but I could be wrong about that.

10 Q Do you recognize the handwriting at the  
11 bottom of the page?

12 A I'm ashamed to say I don't, but I presume  
13 it's Mr. Keeney's since those are his initials.

14 Q Perhaps between the two of us we can  
15 interpret his handwriting: I don't see us involved  
16 at this point --

17 A It says: I don't see us as involved at  
18 this point. Bureau's position is reasonable, JCK.

19 Q And attached to that is a handwritten note  
20 dated 10/19/92 to Bob from Larry, which I won't read  
21 into the record at this time, and then the FBI  
22 teletype, another copy of the teletype that I

1 previously showed you. To cut through this as  
2 briefly as possible, does this appear to be Mr.  
3 Mueller passing this package of information on to Mr.  
4 Keeney and Mr. Keeney responding: I don't see us as  
5 involved at this point. Bureau's position is  
6 reasonable.

7 A Well it's as reasonable an inference from  
8 this piece of paper as I could make.

9 Who is Jerry McDowell?

10 Q I know who Jerry McDowell is, but feel  
11 free if you would like. Actually my question was  
12 going to be this appears to be Mr. Keeney reading the  
13 FBI teletype and advising Mr. Mueller that the  
14 Bureau's position in that is reasonable.

15 A You know, there's some very colorful  
16 testimony in 1992 about what Mr. Keeney does and  
17 doesn't read by Mr. Margolis. I will not speculate  
18 what Mr. Keeney does and doesn't read.

19 Q So leaving aside Mr. Keeney's reading of  
20 this or views on this because that's really not what  
21 I'm interested in here, what I'm interested in are  
22 the notes to Mr. McDowell and to Mr. Keeney who are

1 career Department of Justice officials on 10/23, and  
2 if you could explain how that relates to the  
3 instruction that I believe you testified to from the  
4 Attorney General that this be kept confidential  
5 within a limited number of people.

6 A Well obviously Mr. Mueller chose to make  
7 the circle larger than I did.

8 Q So do you know whether Mr. Mueller was  
9 given the same instruction that you were given?

10 A I presume he was.

11 Q The instruction that you testified to  
12 previously was one that was given to you personally  
13 by Mr. Barr; is that correct?

14 A That's correct.

15 Q And was Mr. Mueller present at the time  
16 that instruction was given?

17 A Well we were in Mr. Barr's office alone  
18 and together on a daily basis for two years. I'm  
19 just not going to be able to help you out with fixing  
20 that. I'm sorry.

21 Q Do you know whose handwriting this is?  
22 This says: Jerry McDowell, FYI.

1 A As an amateur handwriting compariser I  
2 would guess that that's Keeney routing a copy to  
3 McDowell.

4 Q That's helpful because I was trying to  
5 determine the sequence here because it appears to  
6 have gone from Mueller to Keeney.

7 A It's an inferential guess.

8 Q It's helpful nonetheless.

9 A Again, my responsibility was to exercise  
10 my judgment, not Mr. Mueller, not Mr. Keeney, both of  
11 whom I respected, not Mr. McDowell, not anyone in the  
12 Fraud Section, not any other U.S. Attorney in the  
13 country and not any Assistant U.S. Attorney. I had a  
14 separate statutory responsibility which I was not  
15 being allowed to carry out if I'm not apprised of  
16 this referral.

17 Q And recognizing that each  
18 prosecutor/investigator makes his or her own  
19 judgments as to what course of action is appropriate,  
20 and recognizing that you have no way to know what Mr.  
21 Keeney did or didn't do with regard to this document,  
22 I take you would not dispute that this appears to be



1 Mr. Keeney assenting to the recommendation in the FBI  
2 memorandum?

3 A Mr. Keeney, if he read that document,  
4 could easily have read that document, as I suggested  
5 to you earlier, as reflecting a decision to do  
6 nothing prior to the election, no more than that, and  
7 if one reads it in that fashion it is, as Mr. Keeney  
8 says, a perfect reasonable position to take.

9 Q And consistent with the direction that you  
10 had been given by the Attorney General, correct?

11 A Absolutely.

12 Q I'm still a bit confused and perhaps you  
13 could help me here, because if the Attorney General  
14 had directed you and other senior officials at the  
15 Department of Justice that we're not taking any  
16 action on this matter, then I don't understand why it  
17 was necessary for others, including Mr. Keeney, to  
18 review it or opine on it.

19 A Well you would have to ask Mr. Mueller why  
20 he showed it to Mr. Keeney.

21 Q You understand my question though.

22 A And you'll have to understand my answer.

1 Q So you can't shed any further light on  
2 why, notwithstanding the Attorney General's  
3 direction, people were evaluating this?

4 A The Attorney General's direction is that  
5 we will do nothing out of the ordinary and we will do  
6 nothing to reflect an interest in or involvement in  
7 the matter by Main Justice.

8 Mr. Mueller reposed great confidence in  
9 Mr. Keeney, as did and would I, and I would not  
10 quarrel with a decision by Mr. Mueller to have Mr.  
11 Keeney look at anything and be confident that Mr.  
12 Keeney would not leak it and would not broaden the  
13 circle. If Mr. Keeney discussed with Mr. Mueller  
14 sending the matter to Mr. McDowell, I don't know. If  
15 Mr. Mueller would have approved Mr. Keeney sending it  
16 to Mr. McDowell, I would not know.

17 Q I'm not trying to prolong this, but I'm  
18 still somewhat confused in that your testimony has  
19 been that the direction from the Attorney General  
20 right on down through the other senior officials,  
21 including yourself, was that this should be handled  
22 in the normal course of business, this referral, and

1 that nothing out of the ordinary should be done.

2 A No, that's not my testimony.

3 Q I thought that's what you just said.

4 A No. It should be handled in Little Rock  
5 and by the FBI in the ordinary course. It wasn't  
6 being handled by me in the ordinary course. That was  
7 the direction. The ordinary course was not for us to  
8 ask the Fraud Section or the Criminal Division to  
9 opine on anything having to do with banks. That was  
10 my job. If I wanted them to advise me, they would  
11 advise me and not Mr. Mueller. That was the ordinary  
12 course of what would occur in Washington.

13 Q And if the ordinary course in Little Rock  
14 had been to conduct an overt investigation of this  
15 matter with grand juries, subpoenas being issued and  
16 with witnesses interviewed by FBI agents, would you  
17 or others in Washington have taken any action  
18 considering the timing of this matter?

19 A No. We wouldn't have been able to for the  
20 same atmospheric reason. This was not a referral  
21 that I could opine on before the election, and after  
22 the election it was not a referral that I could opine

1 on, opine in the sense of take action on.

2 Q So both before and after the election you  
3 and the other politically appointed officials in  
4 Department of Justice Headquarters in Washington, in  
5 your view, couldn't take any action one way or  
6 another with regard to this referral?

7 A I didn't form an opinion as to anyone  
8 other than Mr. Barr and myself, and perhaps Mr.  
9 Terwilliger and Mr. Mueller, but that would have been  
10 my view. We could not take action or be perceived as  
11 taking action. Had the election gone the other way I  
12 would have been expected to take action, or at least  
13 be advised as to why there has been a delay and to  
14 what, if any, investigative course was deemed  
15 appropriate by the U.S. Attorney, by the FBI and by  
16 the referring agency. That would have been my view  
17 of my responsibility.

18 Q So the matter, in your view, was to be  
19 handled at the discretion of the U.S. Attorney's  
20 Office in Little Rock; is that correct?

21 A The matter before the election was to be  
22 handled in the professional, appropriate discretion

1 of the Little Rock U.S. Attorney's Office.

2 Q Well professional and appropriate  
3 discretion are judgments. Those aren't bright line  
4 tests.

5 A Maybe to you, but to career prosecutors  
6 they're fairly bright line.

7 Q Well I don't want to be argumentative.

8 A Fine.

9 Q I'm just trying to understand the facts of  
10 what happened here, because it appears to me that --

11 A The facts of what happened here, frankly,  
12 don't appear to be in dispute.

13 Q The reasons for what happened  
14 here?teletype

15 A You will have to ask Mr. Banks for his  
16 reasons for doing or not doing what her perceived to  
17 be his job. I believe we've covered my view of  
18 whether he did his job in the manner I expected it to  
19 be done.

20 Q No, I'm focusing on what was done at the  
21 Department of Justice Headquarters in Washington.

22 A At the Department of Justice Headquarters

1 in Washington I knew the assistants and the agents  
2 working any number of specific sensitive referrals.  
3 I knew their investigative game plans, I knew their  
4 investigative results, I knew their proposed  
5 indictments, their proposed civil actions and their  
6 proposed joint activity with the regulatory agencies.  
7 This is a referral that I in the ordinary course  
8 would have monitored in that fashion. The Attorney  
9 General and I chose not to do that because of the  
10 political atmosphere at the time. I believe to this  
11 day that that was an appropriate professional and  
12 responsible decision.

13 Q Including directing the FBI in Little Rock  
14 to take steps that hadn't previously been taken?

15 A I didn't direct the FBI in Little Rock to  
16 take steps. I directed the FBI in Washington to do  
17 that which appropriate and normal. It is normal for  
18 the FBI SAC to have access to referral information.  
19 It was not Mr. Banks' discretion to make it abnormal.

20 Q Is it normal for the FBI Headquarters in  
21 Little Rock to direct the SAC in a district to  
22 conduct a preliminary inquiry and respond within one

1 week? Is that your testimony that that's normal?

2 A There are any number of instances in which  
3 FBI Headquarters directed FBI field offices to  
4 respond on timetables FBI Headquarters set for its  
5 reasons or mine on particular matters.

6 Q But with regard to RTC criminal referrals,  
7 which I understand were one of your specific  
8 responsibilities, was it normal for FBI Headquarters  
9 to direct an FBI field office to respond within one  
10 week with a plan of investigative action?

11 A I can't tick off the number of times, but  
12 I know that on at least one and probably more  
13 occasions we set very short deadlines for responding  
14 on the investigative merits of particular allegations  
15 or particular proposals by the FBI or by U.S.  
16 Attorney's Offices.

17 There were any number of cases that were  
18 in controversy over time, and there were any number  
19 of cases that I had been approached by regulatory  
20 agencies complaining about inaction where I would go  
21 to the FBI and say track this down, and they would  
22 track it down, and that was the whole point of

1 establishing the statute because Congress believed  
2 that the U.S. Attorney's Offices and the FBI were not  
3 being adequately responsive to the regulatory  
4 agencies. So they created a position whose job it  
5 was to both professionally monitor the cases and to  
6 make sure that the regulatory agencies were  
7 adequately serviced.

8 So if you're asking me do I think we  
9 carried out our responsibilities professionally, yes.  
10 I made sure that more than adequate resources were  
11 devoted to a highly questionable series of  
12 allegations relating to the Silverado Bank  
13 investigation. I made sure that any number of  
14 resources were devoted to investigations having to do  
15 with Charles Keating and David Paul and Tom Spiegel  
16 and any number of bankrupt institutions around the  
17 country that were brought to my attention whether by  
18 Al Burn or Harris Weinstein in their capacities at  
19 their respective agencies, or by Jerry Jacobs at the  
20 RTC. That was my job and I carried it out in a  
21 professional and appropriate fashion.

22 If I had carried this particular instance

1 out in an inappropriate fashion I would have leaked  
2 it to the media as I was in daily contact with  
3 reporters on various other issues. I reject out of  
4 hand any assertion that an inquiry by me regarding  
5 this or a direction by me regarding this could be  
6 inappropriate as a matter of law given what my  
7 statutory responsibilities were.

8 MR. COLE: I don't have any further  
9 questions.

10 MR. GICALE: I don't have anything  
11 further.

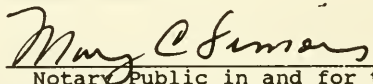
12 (Whereupon, at 5:58 o'clock p.m. the  
13 deposition of Ira H. Raphaelson concluded.)  
14

15 -----  
16 IRA H. RAPHAELSON  
17  
18  
19  
20  
21  
22



CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, MARY C. SIMONS, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

SEPTEMBER 1, 1999

**DEPOSITION OF ELLEN B. KULKA  
IN RE: S. RES. 120**

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**FRIDAY, OCTOBER 27, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of ELLEN B. KULKA, called for examination pursuant to notice of deposition, at 1:40 p.m. in Room 534 of the Dirksen Senate Office Building, before JOANNE LIVERANI, a Notary Public within and for the District of Columbia, when were present:

H. CHRISTOPHER BARTOLOMUCCI, Esq.  
Majority Associate Special Counsel  
NEAL E. KRAVITZ, Esq.  
Minority Principal Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

MUNSELL ST. CLAIR, Esq.  
Resolution Trust Corporation  
1717 H. Street, NW  
Washington, DC 20434  
On behalf of Resolution Trust Corporation.

JAMES P. ULWICK, Esq.  
Kramon & Graham  
Commerce Place  
One South Street  
Suite 2600  
Baltimore, MD 21202-3201  
On behalf of the Deponent.

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## 1 PROCEEDINGS

2 Whereupon,

3 ELLEN B. KULKA

4 was called as a witness and, having first been duly  
5 sworn, was examined and testified as follows:

## 6 EXAMINATION

7 BY MR. BARTOLOMUCCI:

8 Q Ms. Kulka, thank you for coming here  
9 today. You have just been sworn in. Before the  
10 questioning begins, there are some preliminary  
11 matters which I need to read for the record, and to  
12 inform you.13 This deposition is being conducted pursuant  
14 to Senate Resolution 120. That resolution  
15 establishes a special committee administered by the  
16 Banking Committee to investigate Whitewater  
17 Development Corporation and certain other related  
18 matters. The matters within the scope of the  
19 resolution will be the subject of today's  
20 deposition.21 The deposition is being conducted in  
22 advance of public hearings to be held sometime next

1 month and thereafter. You may or may not be called  
2 to testify at those hearings.

3 I will be asking you questions under oath.  
4 If you don't understand a question, please let me  
5 know and I will rephrase it. And if at any time you  
6 need a break, again, let me know and we will take  
7 one.

8 The stenographer will prepare a record of  
9 the questions and answers. The deposition will be  
10 treated as committee confidential until the  
11 commencement of the hearings. Prior to the hearings,  
12 you will receive a letter from the committee  
13 informing you that you may come to the Senate to  
14 review the transcript of your deposition and make  
15 note of any corrections for transcription on an  
16 errata sheet.

17 If you are called to testify at the public  
18 hearings, you will be permitted to have a copy of  
19 your deposition transcript four days in advance  
20 thereof. You may be and are represented by counsel  
21 today.

22 Could counsel please give his name for the

1 record.

2 MR. ULWICK: My name is Jim Ulwick,  
3 U-l-w-i-c-k, with the law firm of Kramon & Graham.

4 MR. ST. CLAIR: My name is Munsell  
5 St. Clair. I am an attorney for the Resolution Trust  
6 Corporation. Ms. Kulka and other witnesses are  
7 appearing because of a request of the Senate special  
8 committee for depositions of present and former  
9 employees of the RTC. The RTC is not waiving any  
10 applicable privileges as a result of Ms. Kulka or  
11 other employees or former employees appearing and  
12 answering questions at these depositions.

13 BY MR. BARTOLOMUCCI:

14 Q I will also note for the record that any  
15 objections to questions, to the form of questions,  
16 will be noted for the record. Counsel is entitled to  
17 object on grounds of privilege or scope, and the  
18 committee chairman may rule on any objections if you  
19 refuse to answer a question.

20 Would you please provide your full name for  
21 the record?

22 A Ellen B. Kulka.



1 Q And can you provide us with an address  
2 where we can contact you in the next few months?

3 A You can reach me care of my attorney, James  
4 Ulwick, Kramon & Graham, in Baltimore.

5 MR. BARTOLOMUCCI: The address there?

6 MR. ULWICK: Kramon & Graham, 1 South  
7 Street, Baltimore, Maryland 21202. 410-752-6030.

8 BY MR. BARTOLOMUCCI:

9 Q Ms. Kulka, you were general counsel of the  
10 RTC in 1994?

11 A That's correct.

12 Q And at some point you left that position?

13 A That's correct.

14 Q When did you leave that position?

15 A I believe my official last day was July 7,  
16 1995.

17 Q Was your departure precipitated by the  
18 winding up of the RTC's activities?

19 A No.

20 Q Can you tell us why you did leave?

21 A I decided that I had served as long as I  
22 cared to, and had been productive for me in the

1 organization, and I wished to take some personal  
2 time.

3 Q Am I correct that you began serving as  
4 general counsel in January of '94?

5 A That's correct.

6 Q January 17th?

7 A That's correct.

8 Q And where were you before you took that  
9 position?

10 A I was regional counsel in the northeast of  
11 the Office of Thrift Supervision.

12 Q Who formally hired you as general counsel  
13 of the RTC?

14 A Roger Altman.

15 Q And did you, in terms of the chain of  
16 command, did you report to Mr. Altman during your  
17 time as general counsel?

18 A Yes.

19 Q Was there anyone in between you and  
20 Mr. Altman?

21 A Well, it was not clear, because the  
22 position of deputy CEO had been created by -- the

1 Completion Act on December 17th, 1993 created a  
2 position that was occupied by someone commencing  
3 January 4th. And there was -- it was not clear  
4 whether general counsel would be reporting to deputy  
5 or the actual CEO and the actual reporting structure  
6 reflected the report to the actual CEO. So I would  
7 say I reported to both of them, but officially, on  
8 the record, I reported to Roger Altman.

9 Q Who was the deputy CEO in 1994?

10 A John E. Ryan.

11 Q Ms. Kulka, did there come a time in 1994  
12 when the RTC's Inspector General's Office, became  
13 involved in an investigation regarding contacts  
14 between the RTC and the Treasury Department and the  
15 White House?

16 A Yes.

17 Q Can you tell us when the IG's office became  
18 so involved?

19 A Well, I am not sure exactly when it became  
20 involved, other than to say that Secretary Bentsen  
21 sent a letter to Mr. Ryan on June 30, 1994, asking  
22 for the RTC's IG to participate in an investigation

---

10

1 that Treasury IG was conducting on behalf of the  
2 Office of Government Ethics into those contacts. So  
3 I don't know if they became involved before that or  
4 after that.

5 Q Can you explain for me the relationship  
6 between the general counsel's office and the  
7 Inspector General within the RTC?

8 A I don't know that there is a special  
9 relationship between the general counsel's office and  
10 the Inspector General. The general counsel's office  
11 provides all of the legal services for the Resolution  
12 Trust Corporation and the Inspector General functions  
13 pursuant to the Inspector Generals Act with respect  
14 to all of the activities of the RTC.

15 Q Let me focus the question a little more.  
16 Are the two formally separate groups within  
17 the RTC?

18 A Yes.

19 Q Who would the Inspector General report to?

20 A The CEO.

21 Q So no one within the Inspector General's  
22 Office would report to anyone in the general

1 counsel's office and vice versa?

2 A That's correct.

3 Q What was the involvement of the general  
4 counsel's office in that investigation, if any?

5 A Well, there were a number of people who  
6 were employed within the general counsel's office who  
7 gave depositions, I believe. Documents were produced  
8 at the request of the Inspector General by general  
9 counsel's office, and the Inspector General  
10 propounded a number of questions that were  
11 characterized as legal in nature but they were not  
12 necessarily all legal, and asked for a response from  
13 the general counsel's office which was provided. So  
14 I think that's the basic role the general counsel's  
15 office played.

16 Q But in terms of actually doing the  
17 investigation and uncovering the facts, that was the  
18 bailiwick of the Inspector General's Office?

19 A Yes.

20 Q Do you recall sending a letter to Dennis  
21 Foreman on June 14, 1994, or thereabouts?

22 A I recall sending some letters to Dennis

1 Foreman in the spring but I would have to see the  
2 letters to know the dates that they were sent.

3 Q I am going show the witness a document  
4 which is numbered 015225 and actually that number  
5 refers to a fax transmittal cover, and then a  
6 separate document begins on 015226. And it is a  
7 letter from Ms. Kulka to Dennis Foreman, dated June  
8 14, 1994. I am providing that to the witness. Take  
9 a moment, if you would, just to look it over.

10 Does seeing this document refresh your  
11 recollection about it?

12 A It refreshes my recollection that it was  
13 dated June 14, 1994.

14 Q Can you tell us why you sent this letter?

15 A As I recall, one of the attorneys in the  
16 general counsel's office of Treasury had called,  
17 either me or someone on my staff, some weeks before,  
18 to say that some documents that had been provided  
19 pursuant to Mr. Fiske's subpoenas the prior spring,  
20 early spring, were to be provided, I believe, to the  
21 White House, and that some of those documents were  
22 RTC documents or arguably RTC documents, and that we

1 might want to look at some of them. So I think that  
2 this was part of the dialogue that continued from  
3 that time.

4 Q I am going to read to you a part of the  
5 letter which appears on page 3. The first full  
6 paragraph says "you are hereby formally notified that  
7 any disclosure to the White House of documents which  
8 are RTC documents is unauthorized, and may jeopardize  
9 the RTC's ability to protect our investigation, our  
10 deliberative processes, the attorney-client  
11 relationship and the privacy of third parties."

12 I take it this ties into what you just said  
13 about the concern about potential releasing of  
14 documents to the White House?

15 A It certainly is part of what we were  
16 discussing in the letter and the phone  
17 conversations.

18 Q Does this letter relate in any way to the  
19 IG investigation of the White House-Treasury RTC  
20 contacts that we were talking about previously?

21 A I really don't know.

22 Q You hadn't written it in connection with

1 that investigation?

2 A As I told you, I was unaware that there was  
3 such an investigation until I saw Secretary Bentsen's  
4 letter that was dated June 30th.

5 Q June 30th, okay.

6 Did there come a time when you learned that  
7 transcripts of depositions taken of RTC personnel by  
8 RTC IG investigators had been turned over to the  
9 White House?

10 A Yes, but those depositions were taken by a  
11 combination of Treasury IG and RTC IG staff.

12 Q When did you learn that such a disclosure  
13 to the White House had occurred?

14 A I believe that it was the Thursday  
15 immediately before the commencement of hearings on  
16 the Whitewater matter by the Senate in August of  
17 19 -- or end of July of 1994.

18 Q How did you find out about it?

19 A I got a call from Pat Black who is the  
20 counsel to the Inspector General of the RTC.

21 Q Pat was involved in the investigation on  
22 the IG side?

1 A Presumably so.

2 Q And what did she tell you, in this call?

3 A If I recall correctly, her major purpose in  
4 the call, I believe, was to advise me that the  
5 Inspectors General were preparing to release all of  
6 the deposition testimony taken from RTC witnesses, as  
7 well as other witnesses, for public view the  
8 following day, prior to the Senate hearings. And in  
9 the course of her discussion with me, she noted that  
10 the material had been released to White House.

11 Q What was your reaction upon hearing that?

12 A I was extremely agitated.

13 Q What was the reason for your agitation?

14 A I did not think that information given by  
15 RTC personnel who were involved with the RTC's  
16 investigation should be delivered to any third  
17 parties without the consent of the RTC.

18 Q Is that because, in your mind, some of what  
19 was contained in those transcripts was confidential  
20 information?

21 A I think it's partially that, but it is, of  
22 course, the whole issue of RTC documents and RTC

1 information being the property of the RTC and  
2 shouldn't be cavalierly handled by other people. And  
3 that the RTC should have control over that  
4 information is an important principle, as far as I am  
5 concerned.

6 Q What did Pat tell you, Ms. Black, what did  
7 she tell you about how the release of the information  
8 had occurred?

9 A Well, I think she indicated that it had  
10 been primarily a decision of the Treasury's IG to do  
11 that.

12 Q Did she say who in the Treasury's IG office  
13 had made that decision?

14 A I don't recall her saying so.

15 Q Did Ms. Black say whether -- what her  
16 involvement in the release was, if any, the release  
17 of the information?

18 A Well, I think then and later in the day she  
19 tried to indicate to me that it wasn't her decision.

20 Q So she was telling you that Treasury had  
21 done that, Treasury IG's office had done that on its  
22 own?



1 A Well, whatever I said before, I think is  
2 basically what she indicated to me.

3 Q What did you do, if anything, upon learning  
4 this information had been turned over to the White  
5 House in an attempt to, you know, remedy the problem  
6 or take steps to combat it? Did you take any action,  
7 any response to it, other than to be outraged?

8 A I demanded a meeting with the Inspector  
9 General from the Treasury, the Inspector General from  
10 the RTC and the counsel for each of them.

11 Q And was such a meeting held?

12 A Yes.

13 Q When was it held?

14 A It was held the morning of the same day  
15 that I got the call from Ms. Black.

16 Q This is that same Thursday prior to the  
17 start of the Senate hearings?

18 A Yes.

19 MR. BARTOLOMUCCI: Would you read back to  
20 me the answer about who was there.

21 (The reporter read the record as requested.)

22 BY MR. BARTOLOMUCCI:

---

1 Q When that meeting took place, in fact, was  
2 the IG Treasury, IG RTC, were they both present?

3 A Yes.

4 Q And who else actually attended that  
5 meeting?

6 A I am not sure I remember everybody who was  
7 there at this point, but Bill Collishaw attended and  
8 I believe Jack Binkley was there.

9 Q Who were they?

10 A Well, Bill Collishaw is presently the  
11 general counsel of the Resolution Trust Corporation.  
12 And Jack Binkley is an attorney, I don't remember his  
13 title, on the staff of general counsel's office.

14 Q Do you remember what their positions were  
15 at the time of that meeting?

16 A I think that Bill was the assistant general  
17 counsel for corporate affairs on my staff, and Jack  
18 was an attorney in that office, as he continues to  
19 be, dealing with issues like FOIA requests and other  
20 confidentiality, release of information, document  
21 requests.

22 Q And who were their respective Inspector

1 Generals at that time?

2 A Well, I can't remember the names of the  
3 people at the Treasury so whoever it was, it was, and  
4 I don't think they are the same people who serve  
5 now.

6 But, I believe that the Inspector General  
7 of the RTC, who was Jack Adair, continues to be Jack  
8 Adair, and that Pat Black was his counsel and  
9 continues to be his counsel.

10 Q Was Pat Black at this meeting?

11 A Yes.

12 Q What was said at the meeting? You can  
13 start with what you said.

14 A I really don't remember the specific words  
15 but I was very, very exercised. And I think, true to  
16 my reputation, I made it very clear that I thought  
17 everybody's behavior in the matter had been highly  
18 inappropriate, in many more words than that.

19 Q Did Mr. Adair share that view?

20 A Mr. Adair, I think, if he said anything,  
21 said virtually nothing.

22 Q How about the Treasury IG?

---

20

1 A Similarly.

2 Q Was there any discussion at that meeting  
3 about how this release had happened?

4 A I don't recall there being a discussion as  
5 to how it had happened.

6 Q Let me rephrase that.

7 Was there a discussion at that meeting  
8 about who had disclosed the transcripts?

9 A I think it was my clear understanding from  
10 the meeting that the Treasury IG had authorized the  
11 release. His general counsel, I think, indicated  
12 that that was the case.

13 Q That the IG, himself --

14 A Who worked with or for or represented the  
15 IG. But it was my -- or else I gleaned that just  
16 from the context. I don't remember specific touching  
17 on it, but the documents were under the control of  
18 the IG of the RTC and the IG of Treasury. And I  
19 don't recall anyone saying that anyone, other than  
20 those people, were responsible for their custody and  
21 control.

22 And whether I came to the conclusion, based

1 on the prior statement that Pat Black had made to me,  
2 or further comments at the meeting, that it was the  
3 Treasury IG, or it was actually stated, I don't  
4 remember clearly, but the clear import of the meeting  
5 was that it had been the Treasury IG's decision. I  
6 thought and they thought that was a perfectly  
7 appropriate reasonable decision. So that's the  
8 thrust, I think, of the meeting on that subject.

9 Q So at the meeting they defended the  
10 decision as appropriate and reasonable?

11 A Yes, yes.

12 Q Did they explain why they thought it was  
13 appropriate and reasonable?

14 A Well, I think their counsel suggested that  
15 it was all within the government and that the  
16 privileges were not waived when they were delivered  
17 to other government agencies.

18 Q Weren't White House officials objects of  
19 the investigation, at least in parts?

20 A I think the people who commissioned the  
21 IG's investigation would know better about who the  
22 objects were than I would.

---

22

1 Q Is it your understanding that they were or  
2 were not?

3 A My understanding is that they were looking  
4 into contacts between RTC and Treasury, and RTC and  
5 the White House, and Treasury and the White House,  
6 and so forth. That's what my understanding was. No  
7 one ever shared with me the objects of the  
8 investigation. The IG did not discuss them.

9 MR. ULWICK: I think probably a better word  
10 would be subjects.

11 THE WITNESS: Subjects.

12 MR. KRAVITZ: I think it's only fair to  
13 tell Ms. Kulka, and this is all public record, that  
14 the instructions from Mr. Bentsen to the OGE were to  
15 evaluate the ethical propriety or impropriety of  
16 conduct by Treasury Department employees only.

17 MR. BARTOLOMUCCI: Neal, I think we can get  
18 into that in your questioning if you want.

19 MR. KRAVITZ: My point is I don't think it  
20 is fair to ask her what her understanding is, which  
21 you did. I don't think it is fair to imply the  
22 opposite of what you know to be true to her as a

1 fact.

2 MR. BARTOLOMUCCI: I don't think I've  
3 implied anything of the sort.

4 BY MR. BARTOLOMUCCI:

5 Q At that meeting, was there any discussion  
6 about who in the White House receive the information?

7 A Again, I don't know if it was at that  
8 meeting, before that meeting, or after that meeting,  
9 but my understanding has consistently been that it  
10 went to Lloyd Cutler or members of his staff.

11 Q Do you remember who told you that or how  
12 you came to learn that fact?

13 A I just told you that I don't remember.

14 Q Did there come a time at which it appeared  
15 that unredacted transcripts of the depositions taken  
16 were going to be released to the Office of Government  
17 Ethics?

18 A I don't believe the issue of what was  
19 released to the Office of Government Ethics ever came  
20 up.

21 Q Do you recall a meeting held on July 28, or  
22 thereabout, that you attended, during which an issue

1 for discussion was whether transcripts would be  
2 disclosed in an unredacted fashion?

3 A First of all, I don't know what day July 28  
4 was. It may have been the meeting that I am speaking  
5 of, that may have been July 28. I would need a  
6 calendar and if you could provide me with one and I  
7 could look at the dates we all understand the  
8 hearings were and I could count back to the Thursday  
9 before.

10 MR. KRAVITZ: I can tell you as a matter of  
11 record the hearings began on Friday July 29, 1994, so  
12 it appears July 28 would be the Thursday before that.

13 THE WITNESS: Then it could have been the  
14 meeting which you are talking about. When you say  
15 "disclosed," I don't know what you mean by  
16 "disclosed," whether you were specific disclosure in  
17 mind. I would be happy to respond if you can tell me  
18 what you mean.

19 BY MR. BARTOLOMUCCI:

20 Q Let me ask you this: After you had learned  
21 about the disclosure of the transcripts to the White  
22 House, did you only attend one meeting in which that

1 issue was discussed?

2 A Are you referring to one meeting with the  
3 Inspector Generals?

4 Q Well, let's start with that.

5 A Yes.

6 Q Did you attend any other meetings?

7 A Well, I am sure I had a number of meetings  
8 within the RTC about this issue, but I couldn't  
9 pinpoint them for you at this point.

10 Q At this same meeting, with the Inspector  
11 Generals, was the issue of redaction of the  
12 transcripts discussed?

13 A Yes.

14 Q Why was that being discussed?

15 A Because I was advised, as I think I  
16 informed you from the phone call that Pat Black had  
17 made to me, that it was the intention of both of the  
18 Inspectors General to release the transcripts of  
19 depositions to the public at large.

20 Q And you expressed a view on that --

21 A Yes.

22 Q -- subject at the meeting?

1 A Yes.

2 Q What was your view?

3 A Well, if you tell me what that means, I  
4 will tell you what my view was.

5 Q About the disclosure to the public at  
6 large?

7 A I thought that it was extremely  
8 disappointing in terms of the mission of the RTC, and  
9 very disappointing in terms of the reliance that the  
10 staff of the RTC had placed on the IG when the  
11 various members of the staff had testified, because  
12 they made assumptions about the fact that the  
13 information they had would be confidential. And I  
14 thought it would have an extraordinary deleterious  
15 effect on the ability of the IG to get people to  
16 cooperate as willingly in the future if they used  
17 information in the fashion that they were  
18 contemplating using it.

19 And finally, I thought that it could  
20 seriously negatively impact the preservation of the  
21 RTC's privileges and confidentiality with respect to  
22 its investigation into the Madison Guaranty Savings &



1 Loan matter.

2 Q Am I correct in understanding that at that  
3 meeting you attempted to persuade the IGs not to  
4 release the transcripts publicly at all?

5 A Yes.

6 Q But you weren't successful in that effort?

7 A That's correct.

8 Q But an agreement was reached to redact  
9 certain portions of it?

10 A No.

11 Q The transcripts were not redacted?

12 A The transcripts were redacted.

13 Q But subsequently disclosed in an unredacted  
14 fashion?

15 A I don't believe that that's the case with  
16 respect to the public. I think -- my understanding  
17 is -- though I never control the process so I have no  
18 idea -- that with respect to the public they were  
19 disclosed in a redacted fashion. Whether they were  
20 disclosed to Congress in a redacted fashion, I have  
21 no idea.

22 Q What sort of input did you have in terms of

1 what was going to be redacted?

2 A I left two members of the RTC staff, one  
3 of -- one attorney on my staff and a representative  
4 of the Office of Congressional Affairs at the Office  
5 of the Inspector General that day, reviewing the  
6 depositions to see if they could mark those areas  
7 that they felt required redaction the most, and they  
8 so indicated after going through the deposition  
9 transcripts.

10 Q Did you read any of the transcripts?

11 A After they were made public, I read several  
12 of them.

13 Q But you hadn't before July 28 or  
14 thereabout?

15 A I had never been offered the opportunity to  
16 do so and I never saw them before then.

17 Q Were your concerns about keeping the  
18 information contained in the transcripts  
19 confidential? Was that concern connected to any  
20 specific information, or was it a general concern  
21 about keeping RTC information confidential?

22 A It was a general concern.

1 Q There wasn't any particular information  
2 that you were concerned about?

3 A Well, I didn't know what other people had  
4 said in their depositions. I only knew what I had  
5 said and I hadn't, I don't believe at that time, had  
6 reviewed my own transcript so I wasn't able to focus  
7 on anything specific. My concerns, therefore, were  
8 general.

9 Q At the July 28th meeting, was Francine  
10 Kerner present at that meeting?

11 A I believe you have supplied the name of the  
12 counsel to the Inspector General of the Treasury and  
13 that she was, in fact, the person there representing  
14 Treasury.

15 Q Okay. In July of 1994, did you have a  
16 conversation with Mr. Altman about this  
17 investigation?

18 A I don't think I have spoken to Mr. Altman  
19 since March of 1994.

20 Q You don't think that any time in July you  
21 had a conversation with him, July of '94?

22 A I think I just answered that question.

1 Q I am just trying to confirm that that's to  
2 the best of your recollection.

3 A That's the best of my recollection.

4 Q Did you ever have a discussion with him  
5 about the contacts investigation that we have been  
6 talking about?

7 A I have not spoken to him since March of  
8 1994. I didn't learn of such an investigation until  
9 June 30 of 1994, so my answer is no.

10 Q Did anyone on his staff communicate to you  
11 about the subject of the investigation?

12 A I don't know who Mr. Altman has on his  
13 staff, so I am unaware of anyone talking to me about  
14 that from his staff.

15 MR. ULWICK: When you say "his staff," he  
16 had resigned at that point in time, so maybe he had  
17 staff in private practice but he wasn't in Treasury  
18 at that time anymore.

19 MR. KRAVITZ: July '94.

20 MR. ULWICK: Yes.

21 THE WITNESS: I think he was at Treasury  
22 but he was no longer the CEO of the RTC.

1 MR. KRAVITZ: That's my understanding. I  
2 was going to suggest, if you have a document that  
3 would refresh Ms. Kulka's memory about this, you show  
4 it to her.

5 MR. BARTOLOMUCCI: I was asking her --

6 MR. KRAVITZ: The record should reflect you  
7 were looking in a file and appeared to be reading a  
8 document, after which time you changed your question  
9 from whether she had a conversation with Mr. Altman  
10 to whether she had a conversation with someone on his  
11 staff.

12 MR. BARTOLOMUCCI: The record should  
13 reflect that I am looking at a document almost  
14 throughout the course of this deposition, but --

15 BY MR. BARTOLOMUCCI:

16 Q -- I would like to pursue a different  
17 topic, at this point.

18 In January of 1994, did you have a hand in  
19 a decision to reopen the investigation into Madison  
20 Guaranty Savings & Loan?

21 A I believe that decision had been made  
22 before I arrived at the RTC.

1 Q So when you became general counsel, it had  
2 already been determined that there would be further  
3 investigation of Madison?

4 A I believe so.

5 Q What was your role, if any, in getting that  
6 new investigation going?

7 A The people who were in charge of it worked  
8 for me. So I, I think, held a number of meetings  
9 inquiring what had happened before, both before the  
10 new investigation was reopened and originally when  
11 the RTC had investigated the matter, and what they  
12 were doing as time went on.

13 Q Do you know why the case was reopened?

14 A Yes.

15 Q Can you tell us?

16 A Yes.

17 The statute that was called the Completion  
18 Act was adopted on December 17th, 1993. The  
19 Completion Act reopened the statute of limitations  
20 for certain kinds of conduct with respect to  
21 institutions that the RTC had been appointed  
22 receiver -- for which the RTC had been appointed

1 receiver or conservator. And one of the institutions  
2 for which a statute of limitations had been revived  
3 was Madison Guaranty Savings & Loan.

4 Q So you are saying the decision to reopen  
5 the part investigation was precipitated by the  
6 extension of the statute of limitations?

7 A Yes, as the statute of limitations had  
8 completely run on Madison Guaranty several years  
9 before.

10 Q Can you narrow down for me when that act  
11 was passed, extending the statute of limitations?

12 A I think I said it was December 17, 1993.

13 Q Did you have a hand in determining who  
14 would be assigned to the investigation?

15 A No.

16 Q Who made that decision?

17 A Thomas Hindes, the assistant general  
18 counsel for professional liability.

19 Q Am I correct that he assembled a team of  
20 people to be put on the Madison case?

21 A I have never inquired of him exactly what  
22 the process was, but my assumption was he followed

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1 the normal procedure. And that would have been that  
2 the senior counsel he assigned, would have either  
3 assigned or had people already assigned to him as  
4 part of his regular team, were working on the  
5 matter.

6 THE WITNESS: May I have just a moment off  
7 the record.

8 (Witness conferred with counsel.)

9 MR. BARTOLOMUCCI: Back on.

10 BY MR. BARTOLOMUCCI:

11 Q I would like to show you a document which,  
12 for the record, is Bates numbered SK 01160. It's a  
13 document dated February 4th, 1994. Ms. Kulka, you  
14 wrote it. It is labeled "memorandum to the file,  
15 subject: Madison S&L" and it says, these are talking  
16 points for anyone authorized to discuss the Madison  
17 situation. And it goes on, but I just want to show  
18 that to you. Do you remember preparing this?

19 A Yes.

20 Q Do you have a memory about why you wrote  
21 it?

22 A Well, I testified to this at the hearings

1 before the Senate in 1994 -- and I guess I would like  
2 to refresh my recollection by referring to the  
3 transcripts if you've got them -- because I know  
4 Senator D'Amato asked me a number of questions about  
5 this at the time.

6 Q I don't have those transcripts with me.  
7 Can you tell me what you remember now.

8 A I remember issuing this after conversation  
9 with Mr. Ryan.

10 Q Did Mr. Ryan, to your recollection, ask you  
11 to produce a memorandum like this one?

12 A No, I don't recollect a specific request  
13 but I remember a thorough agreement on his part that  
14 this was an appropriate thing to issue.

15 Q Was there an event that precipitated that  
16 meeting with Ryan?

17 A The best of my recollection at this point  
18 is that there were constant stories in the press.  
19 There were constant phone calls from the press,  
20 attempts to get interviews. Knew from our press  
21 people at the agency that the press was calling  
22 people at the RTC in various offices; all kinds of

1 staff people trying to get information and that the  
2 reputation for the RTC was that it was the leakiest  
3 of organizations and that information would fly out  
4 the door in all kinds of ways that weren't  
5 authorized.

6 So I think that -- I have no specific  
7 recollection of an event or a specific piece of news  
8 or whatever that precipitated it, but rather that  
9 general concern.

10 Q You think it was the press activity, at or  
11 about that time?

12 A That's the best of my recollection.

13 Q Now, I note that it is addressed to the  
14 file, and then cc's to seven individuals: Altman,  
15 Hanson, Ryan, Dudine, Katsanos, Knight, Hindes.

16 Is it your understanding that these people  
17 were supposed to take this document and then relay  
18 the information to their subordinates?

19 A May I?

20 Q Of course.

21 A I don't know that I had that kind of  
22 understanding with each of the people who was on



1 here.

2 Q I guess what I am getting at, if you wrote  
3 the memo to sort of outline what an appropriate  
4 response would be in terms of talking to the press,  
5 who was intended to have this memorandum?

6 A The people who were copied on it.

7 MR. ULWICK: Object to the form of the  
8 question.

9 BY MR. BARTOLOMUCCI:

10 Q Am I correct that the purpose of this memo  
11 was to record what could appropriately be  
12 communicated to the press, in your view, about  
13 Madison?

14 A That was one objective.

15 Q Can you tell me what another objective was?

16 A Well, just by looking at it now, it seems  
17 that an objective is to make sure that the correct  
18 information was communicated to Congressional members  
19 who were making inquiries as well.

20 Q Do you recall having a meeting with April  
21 Breslaw in late March, 1994?

22 A Yes.

1 Q Was that the first time you had met  
2 Ms. Breslaw?

3 A I believe that I had met Ms. Breslaw --  
4 strike that.

5 I think that I may have met Ms. Breslaw at  
6 the meeting I had with all of the staff of the legal  
7 division to introduce myself when I first came. I  
8 think she may have been present. There were several  
9 hundred people there but I don't know specifically.

10 Q Can you tell us the reason why you had a  
11 meeting with Ms. Breslaw in late March of '94?

12 A I found out that Ms. Breslaw had been  
13 talking to the press, without authority, with respect  
14 to comments that Congressman Leach had made about her  
15 on the floor of the House, either the preceding day  
16 or two days before, I don't recollect exactly which  
17 it was.

18 Q And did you tell her that she's not  
19 authorized to talk to the press?

20 A Well, I told her, to the best of my  
21 recollection now, that, as she knew, no staff member  
22 of the RTC was authorized to discuss RTC matters with

1 the press without prior approval.

2 Q And she had not had prior approval for the  
3 press contacts she had made, that you were aware of?

4 A Well, she didn't make press contacts, to  
5 the best of my knowledge. I think the press was  
6 harassing her and she responded. That's my best  
7 recollection, but my best recollection is also, that  
8 she did not have approval to make the statements she  
9 made.

10 Q And you told her that she was not to  
11 communicate to the press thereafter without approval?

12 A I believe that was the gist of our  
13 discussion on that issue.

14 Q Do you remember whether she had any other  
15 communications with the press after your meeting?

16 A My impression is that she did not, and that  
17 she did seek approval to do so, and then decided that  
18 she did not intend to follow through and have any  
19 conversation.

20 Q So after your meeting, she was never  
21 authorized to talk to the press?

22 A No, I think I just indicated the contrary.

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1 That she sought the approval, she obtained approval,  
2 and then decided, to the best of my recollection -- I  
3 don't know whether anything has changed with respect  
4 to that -- that she would not speak to the press.

5 (Recess.)

6 BY MR. BARTOLOMUCCI:

7 Q I want to turn your attention to the time  
8 in August of 1994 when Richard Iorio, Lee Ausen and  
9 Jean Lewis were placed on administrative leave.

10 Can you tell us what your role was in the  
11 decision to have those three placed on administrative  
12 leave?

13 A I participated in advising Mr. Ryan about  
14 what I thought were appropriate procedures and  
15 responses, and I participated with my staff in any of  
16 the legal work that was done with respect to that.

17 Q When did it first come to your attention  
18 that it was being contemplated that the three of them  
19 would be placed on administrative leave?

20 MR. ULWICK: Contemplated by who?

21 MR. BARTOLOMUCCI: By anyone within the  
22 RTC.

1 THE WITNESS: Let's see. I don't remember  
2 the date that the hearings in the House of  
3 Representatives concluded, but it was sometime  
4 towards the middle or end of the following week.

5 BY MR. BARTOLOMUCCI:

6 Q And did someone say to you something like  
7 we need to take action against these people?

8 A I don't think anyone made a statement like  
9 that.

10 Q Okay. Do you know what prompted the  
11 ultimate decision to place them on administrative  
12 leave?

13 A Yes.

14 Q What was it?

15 A Well, Mr. Ryan introduced the subject of  
16 taking disciplinary action against Jean Lewis and I  
17 am not sure if he at that time mentioned Richard  
18 Iorio -- I am certain he didn't mention Mr. Ausen --  
19 because of the conduct that they had participated  
20 in.

21 As a result of his desire to do something,  
22 I suggested that we speak with legal division

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1 personnel who were familiar with personnel practices,  
2 and could advise us of what was an appropriate course  
3 of action. It was a result of those discussions that  
4 led to the use of administrative leave.

5 Q So you are saying that it was Mr. Ryan who  
6 first suggested to you that some action would be  
7 taken against the three of them, if that was a  
8 possibility?

9 A Well, I wish could I just stand by the  
10 words I said, because I don't believe your  
11 restatement of them is an accurate characterization  
12 of them. So if we could read back my response, I  
13 think that --

14 Q I think I am asking a different question,  
15 which is were you first involved in this matter  
16 through Jack Ryan?

17 A If you mean by "this matter," the resulting  
18 action to put those three people on administrative  
19 leave, the answer is yes.

20 Q Do you know what had -- withdraw that.

21 Do you know how Mr. Ryan had learned about  
22 the concerns which ultimately led to the

1 administrative leave action?

2 A I could not tell you all of the methods  
3 that may have been the methods by which he had  
4 learned but I certainly am familiar with a number of  
5 them.

6 Q Okay. Would you share those with us?

7 A Well, as you may recall, Congressman Leach  
8 stood up on the House floor sometime in, I believe  
9 the third week of March of 1994, proceeded to make a  
10 speech which characterized, I guess, the RTC's  
11 actions with respect to its investigation. He  
12 purported to have intimate knowledge of statements  
13 made by RTC staff, referred to confidential documents  
14 that the RTC had or had assembled in the course of  
15 its investigation and released those documents to the  
16 public.

17 Thereafter I believe he made statements and  
18 the press had numerous statements that he had gotten  
19 that information from an RTC investigator in Kansas  
20 City. I know that Mr. Ryan was familiar with that  
21 course of events, was familiar with the information  
22 provided in the press, and was familiar with a number

1 of other matters of concern with respect to the way  
2 in which the office of investigations in the Kansas  
3 City office was conducting itself.

4 Q What were the nature of his concerns with  
5 respect to Lee Ausen?

6 A I think that Mr. Ryan may not have had  
7 specific concerns that he independently addressed,  
8 but in the course of evaluating what, if any,  
9 appropriate course of conduct was to be taken, there  
10 were numerous discussions about what was going on in  
11 the Kansas City office of investigations, who was  
12 involved, why it appeared to be out of control, who  
13 the supervisors were that were participating in  
14 conduct that was either inappropriate or permitting  
15 conduct that was highly inappropriate to go on.

16 And in that context, Mr. Ausen's name was  
17 mentioned as the supervisor of Jean Lewis, and  
18 supervisor of other personnel perhaps, that were  
19 performing in an inappropriate manner.

20 Q At the time at which you became involved in  
21 the process that ultimately led to their being placed  
22 on administrative leave, what information did --

1 withdraw that part -- what were the sources of the  
2 information that you had, that you were basing your  
3 decisions upon?

4 A Many, and I can't recall now what  
5 information I had then versus what information I  
6 subsequently acquired and what I have forgotten since  
7 then. I can give you the best of my recollection but  
8 I can't possibly give you all the sources or  
9 precisely what the information was.

10 Q To the best of your recollection.

11 A Mr. Hinds who supervised the entire office  
12 of investigations was deeply concerned about the  
13 circumstances. The deputy in charge of all of our  
14 litigation, which included more than PLS,  
15 Mr. Tomback, was concerned about it. Mr. Dudine,  
16 James Dudine, who was head of the office of  
17 investigations was concerned about the conduct that  
18 was there, the attorney in charge of our professional  
19 liabilities activities in Kansas City, who had to  
20 coordinate with the office of investigations out  
21 there and used their services, was deeply concerned  
22 and had expressed it.

1 The attorney who was responsible for  
2 responding to subpoenas, in coordinating that out of  
3 that office, from the office of the special counsel,  
4 was concerned about it. The investigator from Denver  
5 who we had assigned to carry out the civil  
6 investigations in Kansas City was concerned about the  
7 conduct out there.

8 So those were sources that I was aware of  
9 and that I or other people made Mr. Ryan aware of.

10 Q Do you recall having a meeting with  
11 Mr. Hinds on August 12th or thereabouts relative to  
12 this matter?

13 A I have a lot of trouble placing dates in  
14 the abstract and if you could show me a calendar and  
15 we could look at the dates of the hearings and the  
16 dates of the week or two following it, I could give  
17 you an idea whether I thought that was a date that I  
18 had such a meeting.

19 Q Do you remember having a meeting with  
20 Mr. Hinds at some time in August specifically about  
21 this matter?

22 A Mr. Hinds was present at at least one



1 meeting about that.

2 Q And if I am understanding you correctly,  
3 the decision to put the three on administrative leave  
4 was sort of a joint decision by you and Jack Ryan and  
5 others; is that a fair characterization?

6 A I want to be precise about this.

7 A number of us had the authority to do  
8 this. If I recall correctly, Tom Hinds signed off  
9 on it because he believed it was absolutely  
10 appropriate. It was, however, Mr. Ryan who was in  
11 control of this process. And I thoroughly concurred  
12 with the propriety of his acts and Tom Hinds's  
13 official acts.

14 I know of no one who was involved in the  
15 process who did not, but I would believe that I  
16 certainly had the authority to do it. But I know,  
17 not I believe, I know I had the authority to do it  
18 but it was a matter which Mr. Ryan was in control of  
19 and making decisions, and I must say I concurred with  
20 his judgment on that matter.

21 Q At the time, do you remember hearing from  
22 people within the RTC that this had been your

1 decision?

2 A Yes. Let me back up. I don't know if it  
3 was at that time or -- I believe it was subsequent to  
4 that time.

5 Q Subsequent to the actual placing of the  
6 administrative leave?

7 A Absolutely.

8 Q But within August or thereabouts, whether  
9 late August, is that the right time frame?

10 A You know, it is very, very hard for me, but  
11 certainly subsequent to it, and not months but  
12 probably weeks subsequent to that, I had heard that.

13 Q Who did you hear that from, if you recall?

14 A I don't know who actually may have said  
15 that to me, that that was the rumor that was widely  
16 talked about.

17 Q How did you react to it?

18 A How did I react to it? I guess I thought  
19 it was probably another piece of somebody trying to  
20 be political with a small p within the agency and  
21 maybe tying into other people's political agendas  
22 outside the agency.

1 Q Are you saying that someone may have spread  
2 this rumor in an attempt to undermine you in some  
3 way; is that what you are saying?

4 A What I said is what I said, and I don't  
5 know what you are saying --

6 Q I am trying to understand what you meant by  
7 it was "political with a small p"?

8 A I don't -- I think that's my thought on  
9 it. I don't know what I can explain to you about it  
10 but that's it.

11 Q Now, at some point a decision was made to  
12 allow the three to return to work. How was that  
13 decision made?

14 A Mr. Ryan decided that the three individuals  
15 should be placed back, and they were.

16 Q Did he consult with you in connection with  
17 that decision?

18 A Yes, yes.

19 Q What was your advice to him?

20 A I advised him to continue these  
21 individuals -- two of the three individuals on  
22 administrative leave until the Inspector General

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1 could complete an inquiry into their conduct.

2 Q How long did you expect that would take?

3 A Frankly, I don't control and didn't control  
4 the timing that the Inspector General used. But the  
5 hope is that with something like this, they would act  
6 quickly but I didn't know.

7 Q Now I know that there were, in between the  
8 time when they were placed on administrative leave  
9 and leave was ended, there were a couple of  
10 investigators -- Randi Mendelsohn, and I think Tom  
11 Sarisky were investigating the allegations against  
12 the three; is that correct?

13 A That's right.

14 Q Were you involved with the decision to have  
15 them collect information?

16 A Yes.

17 Q And what were they told to do?

18 A I think they were told to go to Kansas City  
19 where most of the individuals who were involved in  
20 the issues and would have primary information were  
21 located, to conduct an investigation in accordance  
22 with their past practice, since they had been doing

1 this kind of thing at the RTC and -- at least  
2 Ms. Mendelsohn had been doing for a number of years  
3 before at other agencies -- and to report the facts  
4 back that they discovered as to whether there was a  
5 basis to take disciplinary action against the three  
6 individuals. And I believe they were told that time  
7 was of the essence.

8 Q What did they report back?

9 A They reported that there was, they  
10 believed, substantial misconduct on the part of  
11 Ms. Lewis, and I believe Mr. Iorio, but that there  
12 didn't seem to be substantial misconduct on the part  
13 of Mr. Ausen on the preliminary review.

14 Q Do you know if the three of them were  
15 interviewed by any RTC people involved in the  
16 investigation of the allegations against them?

17 A The three of?

18 Q Iorio, Ausen, Lewis.

19 A At what time?

20 Q From the time that they were placed on  
21 administrative leave to the time that they were taken  
22 off of it.

1 A It was my understanding that they were not  
2 interviewed in that time frame, consistent with the  
3 policy of the agency.

4 Q Were you present for any discussions about  
5 whether they should be interviewed or talked to?

6 A I don't recall that. They may have -- I am  
7 sure the process that was going to be used was  
8 described to me, and I am sure I was aware of the  
9 fact that they would not be interviewed.

10 Q So you don't recall -- you don't recall  
11 yourself asking whether they would be interviewed?

12 A I was accepting advice from the assistant  
13 general counsel -- the woman who had been assistant  
14 general counsel in charge of our employment practice,  
15 who was then the deputy general counsel -- as to what  
16 the standard procedures were in these kinds of  
17 matters, based on her many years of experience and  
18 the advice of Ms. Mendelsohn and Mr. Sarisky who  
19 participated in them.

20 I made no independent judgment because I  
21 have no expertise in government employment rules and  
22 how these things are done.

1 Q Do you know why Mr. Ryan decided to allow  
2 them to return to work?

3 A To the best of my recollection, I think he  
4 came to the decision that the political cost to the  
5 agency exceeded the benefit of keeping the  
6 individuals on administrative leave.

7 Q What political cost was that?

8 A I think he believed the agency was under  
9 extensive attack for its decision and would remain  
10 under attack. And even though he was deeply  
11 concerned by the message that was given to other  
12 people about what happens to individuals who break  
13 all of the rules of the agency, leak confidential  
14 information, tape fellow employees, permit employees  
15 to go out and impersonate FBI agents and all the  
16 other things that seemed to be the case, he felt they  
17 were outweighed by having to take the abuse the  
18 agency was taking in the matter.

19 Q You sound like you are convinced those  
20 things happened.

21 A I am convinced that the preliminary report  
22 of Ms. Mendelsohn and Mr. Sarisky confirmed the prior

1 information, and I certainly felt there was  
2 sufficient information there to make it appropriate  
3 to keep these individuals on administrative leave.

4 Q Does it give you any pause that, in the  
5 collection of that information, the three persons put  
6 on leave were not interviewed or talked to?

7 A No.

8 Q When Mr. Ryan made his decision to allow  
9 them to return to work -- I know you said you opposed  
10 that decision -- did you in fact advise him that the  
11 three should be terminated?

12 A Well, I think we are talking about two  
13 people in terms of staying on administrative leave.  
14 And since I believe that those were the two people  
15 against whom at least a prima facie case had been  
16 made of improper conduct, those were the people we  
17 were particularly focusing on. And I don't think I  
18 came to a conclusion and advised him -- in fact I  
19 know I didn't advise him they should be terminated.

20 I advised him they should stay on  
21 administrative leave, that the IG should be made to  
22 investigate the matter immediately because the IG had

1 tools to complete its investigation that we did not  
2 have, and that those were essential to complete the  
3 record.

4 Q Who is Peter Knight?

5 A Peter Knight is the individual at the RTC  
6 who was in charge of the office of Congressional  
7 affairs.

8 Q What are his responsibilities?

9 A He coordinates responses by the agency to  
10 Congress. He maintains contact with staff of various  
11 committees and the Congresspeople to be able to  
12 respond and keep them informed.

13 Q What was his involvement, if any, in this  
14 administrative leave matter?

15 A I am unaware of any involvement.

16 Q Did you ever have a conversation with him  
17 about it in August or September of 1994?

18 A I certainly did not have a conversation  
19 that I recollect before these people were put on  
20 administrative leave, but I had at least one  
21 conversation with him after.

22 Q What brought about that conversation?

---

1 A The rumors that you had referred to, about  
2 my being the decisionmaker in placing these  
3 individuals on administrative leave.

4 Q And were you talking with him because he  
5 was the source of the rumors?

6 A I was talking with him because his name was  
7 mentioned as someone who was making those  
8 statements.

9 Q Did he indicate to you that he had been  
10 saying that?

11 A Well, I think the conversation started with  
12 my informing him that I had heard that and I wanted  
13 him to be advised of what I believe was an accurate  
14 recollection of what had occurred, and that I  
15 encouraged him to confirm, my recollection was other  
16 people who had been involved, because I didn't want  
17 him to have the wrong information if he was speaking  
18 to Congress at all about this matter.

19 And I advised him that all of the  
20 individuals who were advising Mr. Ryan, four or five  
21 of us, had come to the same conclusion, that it would  
22 be most appropriate to continue these individuals on



1 administrative leave, and most damaging to have them  
2 return, and that Mr. Ryan had made the decision.

3 Q And this was after the -- this conversation  
4 was after the decision had been made to allow them to  
5 return to work?

6 A That's correct. He told me that he thought  
7 that that was probably so, based on his understanding  
8 of Mr. Ryan's prior, I guess, comments on these  
9 individuals or whatever.

10 Q Were you afraid that he was going to tell  
11 Congress that the decision to put them on leave had  
12 been yours?

13 A No.

14 Q Did you write a memo subsequent to your  
15 conversation with Mr. Knight?

16 A I wrote a memo to my file.

17 Q What was the purpose of the memo?

18 A To accurately reflect my conversation with  
19 Mr. Knight.

20 Q Why did you write that memo?

21 A To accurately reflect my conversation with  
22 Mr. Knight.

1 Q Why did you want to have a record,  
2 accurately reflecting the conversation with him?

3 A I thought it was an appropriate thing to  
4 do.

5 Q Why did you think it was appropriate?

6 A I really don't have any thoughts beyond  
7 that at this point.

8 Q Do you write memos reflecting every  
9 conversation you have in connection with your  
10 professional duties?

11 A No.

12 Q But apparently some of them you do?

13 A Yes.

14 Q So am I correct to assume there was  
15 something about this conversation or the subject  
16 matter about it, that you deemed of importance?

17 A Yes, I think I mentioned to you when you  
18 asked me about it, the reason that I thought it was  
19 important was to set the record straight and that had  
20 to do with the political nature of the agency and the  
21 politics that surrounded us outside the agency.

22 Q Even though, as you indicated, Mr. Ryan had

1 decided to allow them to return because of political  
2 heat the agency was getting, you weren't concerned  
3 about how your role in the whole administrative leave  
4 matter looked?

5 MR. ULWICK: Object to the form of the  
6 question. You can answer it if you understand it.

7 MR. BARTOLOMUCCI: I will withdraw the  
8 question.

9 BY MR. BARTOLOMUCCI:

10 Q Was it your testimony that you were not  
11 concerned about Congressional scrutiny of your  
12 involvement in the administrative leave matter?

13 A That was not my testimony.

14 Q Were you concerned about Congressional  
15 scrutiny of your involvement in that matter?

16 A I was concerned about Congressional  
17 scrutiny of any of my actions, and I wanted them to  
18 be accurately portrayed.

19 Q And that's why you wrote the memo to the  
20 file following the Knight conversation?

21 A I don't think I had particularly  
22 Congressional scrutiny in mind when I wrote the memo

---

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1 because I don't think I thought Congress was going to  
2 subpoena every scrap of information in my office but  
3 I have learned since then that that is the case.

4 Q Did you ask Erica Cooper and John Binkley  
5 to analyze documents provided to Congressman Leach by  
6 Jean Lewis?

7 A I can't remember if I asked them to analyze  
8 the documents, per se, but if I recall correctly,  
9 sometime in the spring, after Congressman Leach's  
10 statements and after it became very obvious that it  
11 was an RTC employee who had provided them with that  
12 information, I asked them to look at the issue of the  
13 propriety of the actions of that employee. And I am  
14 assuming that the nature of the documents became  
15 crucial to their review, and they probably informed  
16 me they were going to look at the documents to  
17 determine any advice they would give.

18 So I knew they were looking at it, but I  
19 don't think I specifically said look at the  
20 documents. I think they had the general  
21 responsibility to look at the entire incident and  
22 advise with respect to it.

1 Q You said this was in the spring of '94?

2 A That's correct.

3 Q So, after Leach's statement but before the  
4 decision to put the three RTC people on  
5 administrative leave?

6 A Yes.

7 Q And did you just tell me that it was you  
8 who asked Ms. Cooper and Mr. Binkley to do that work?

9 A Well, I know I -- I can't remember if I  
10 asked Mr. Binkley or Ms. Cooper told me she was going  
11 to have Mr. Binkley look at it, but I certainly asked  
12 Ms. Cooper to have it looked at.

13 Q Did they report back to you?

14 A I think they sent me a memo.

15 Q Do you remember what the memo said?

16 A I would have to see it to remember.

17 Q In the spring of 1994, was any action taken  
18 with respect to the disclosure of information to  
19 Congressman Leach?

20 A No. Excuse me. I take that back.

21 Mr. Ryan and I sent a letter to Mr. Leach about his  
22 disclosure, telling him that we thought that he

1 should be informed of what had gone out, what our  
2 background was, that we had not made statements he  
3 attributed to us, and we deplored the release of the  
4 information, released by him.

5 Q Were you involved in the decision to hire  
6 the Pillsbury, Madison & Sutro firm to perform any  
7 work related to Madison Guaranty?

8 A I was advised that the staff was working on  
9 the matter of their process for selecting counsel,  
10 outside counsel, as is the practice of the RTC with  
11 respect to professional liability matters.

12 I was advised of the four firms that were  
13 asked to submit bids on it. They were described to  
14 me with respect to their credentials and the main  
15 players who would be involved.

16 And I was advised that Pillsbury had --  
17 their response to the request had come forward as the  
18 best firm for that retention.

19 Q So you were advised but you did not take  
20 part in the decision to hire them?

21 A I am sure I could have overcome my staff's  
22 decision. But they explained to me the basis for

1 their decision and I saw no reason to become any more  
2 involved in the making of the decision than was  
3 normally the case, based on what they were describing  
4 to me.

5 Q What was your understanding of what they  
6 were hired to do?

7 A They were hired to act as outside counsel  
8 in the investigation and any subsequent litigation  
9 arising out of our investigation of Madison Savings &  
10 Loan -- Madison Guaranty Savings & Loan.

11 Q So your understanding that their work has  
12 been solely related to investigation of potential  
13 civil claims as opposed to criminal ones?

14 A Absolutely.

15 Q Going back to the memo you wrote following  
16 the conversation with Mr. Knight, did you share that  
17 memorandum with anyone or simply keep it in your  
18 file?

19 A I have no recollection.

20 MR. BARTOLOMUCCI: I don't think I have  
21 anything further.

22 MR. KRAVITZ: Why don't we take three to

1 five minutes.

2 (Recess.)

3 MR. KRAVITZ: Let's go back on the record.

4 EXAMINATION

5 BY MR. KRAVITZ:

6 Q Ms. Kulka, did you give a deposition in  
7 this -- in a related matter before the House Banking  
8 Committee staff on June 23, 1995?

9 A I did give a deposition, I believe that was  
10 the date.

11 Q Have you had an opportunity to review the  
12 transcript of that deposition?

13 A Yes.

14 Q And have you prepared an errata sheet for  
15 that deposition transcript?

16 A Yes.

17 Q We have been discussing, off the record,  
18 the possibility that your counsel could send to the  
19 committee a copy of the transcript of that  
20 deposition, as well as a copy of your errata sheet,  
21 with your home address redacted from the deposition  
22 transcript, and if it was okay with you, that you

1 would adopt that deposition transcript and the errata  
2 sheet as part of your testimony here today in this  
3 deposition; is that agreeable to you?

4 A Yes.

5 MR. KRAVITZ: And why don't we say for the  
6 record that the redacted transcript will be Exhibit  
7 Number 1, and the errata sheet will be Exhibit Number  
8 2.

9 MR. ULWICK: That's fine.

10 MR. KRAVITZ: In light of our schedule, our  
11 only request would be that Mr. Ulwick send that  
12 transcript as quickly as possible, and you probably  
13 should send it to Joe Kolinski who is the chief clerk  
14 of the Banking Committee.

15 MR. ULWICK: Afterwards, when we go off the  
16 record, you can give me the address.

17 MR. KRAVITZ: Fine.

18 BY MR. KRAVITZ:

19 Q With that behind us, I think my questioning  
20 will be very brief and limited just to follow-up  
21 questions on what you have been asked before.

22 I want to direct your attention to the

1 latter part of July 1994, and to the redaction of the  
2 Inspector General deposition transcripts that  
3 occurred by members of the RTC staff that you  
4 testified about earlier. And I believe you mentioned  
5 that you had two staffers from the RTC go through the  
6 transcripts and determine if there was any  
7 information that should be redacted?

8 A That's correct.

9 Q And who were those two people?

10 A Kevin Orr, O-r-r, and Casey Carter. I  
11 don't remember, but Jack Binkley could have done some  
12 of that work, too. Mr. Orr was an assistant general  
13 counsel for litigation at the RTC.

14 Q And Casey Carter?

15 A She was a staff member of the office of  
16 government affairs.

17 Q And the third person you mentioned,  
18 Mr. Binkley?

19 A Is an attorney on the staff of the  
20 assistant general counsel for corporate affairs.

21 Q Did you give Mr. Orr, Ms. Carter or  
22 Mr. Binkley any instructions or guidelines for their



1 redactions of the IG transcripts?

2 A I believe that the guidance I gave them was  
3 that the redactions should protect the  
4 confidentiality of our investigation, and the other  
5 privileges that would be appropriate for the agency  
6 to assert.

7 Q Which privileges were those?

8 A Well, they would be investigative  
9 privilege, the deliberative process privilege, the  
10 attorney-client privilege, the attorney work-product  
11 privilege. The Privacy Act requirements were not  
12 exactly a privilege, but the burden that the RTC or  
13 any other government agency has under the Privacy  
14 Act, that's generally the guideline.

15 Q Did you review the redactions before the  
16 transcripts were made available to the public?

17 A No.

18 Q Have you reviewed them since that time?

19 A I have reviewed some of the transcripts but  
20 I have not focused on the redactions.

21 Q So in other words, you have reviewed the  
22 redacted transcripts?

1 A I think -- yes, I reviewed what was  
2 released to the public. I got a set of those  
3 depositions.

4 Q Ms. Kulka, in your opinion, did the release  
5 of unredacted transcripts of the IG depositions to  
6 the White House have any significant practical effect  
7 on any of the RTC's ongoing investigations in the  
8 Madison case?

9 A I know of no significant effect of that  
10 release.

11 Q Mr. Bartolomucci asked you some questions  
12 about unauthorized statements that April Breslaw made  
13 to the press sometime in the spring of 1994, and I  
14 believe you testified that you learned that  
15 Ms. Breslaw actually did not initiate contacts with  
16 the press, but rather responded to press, that, I  
17 think, to use your word that had been harassing her.  
18 How did you learn that Ms. Breslaw had not initiated  
19 the contacts with the press?

20 A I believe that when she came to meet with  
21 me that Friday afternoon, and described what had gone  
22 on, she discussed how she had been contacted by the

1 press and what happened then. I believe that the  
2 memorandum that I supplied to at least the House, and  
3 maybe the Senate -- that was a reflection of my  
4 assistant's shorthand notes that she took.

5 Q Did you ever learn anything to lead you to  
6 believe that, in fact, Ms. Breslaw had initiated  
7 contacts with the press?

8 A I think that, in the course of that  
9 discussion, in addition to saying that when she  
10 picked up the phone several times, the press was on,  
11 she did return all the calls in the course of it.  
12 And that's the only understanding I have as to  
13 anything that could be characterized as her  
14 initiation.

15 Q In the course of answering questions  
16 earlier in this deposition about the sources of  
17 information that you and others had leading up to the  
18 decision to place Mr. Iorio, Mr. Ausen and Ms. Lewis  
19 on administrative leave, you mentioned the head of  
20 the PLS section in the Kansas City office. Was that  
21 Ms. Yanda?

22 A Yes.

---

1 Q And you also mentioned an attorney who was  
2 in charge of subpoena compliance issues in the Kansas  
3 City office for the Madison case?

4 A Yes.

5 Q Was that Karen Carmichael?

6 A No.

7 Q Who was that?

8 A That was Duane Curtis.

9 Q And you also mentioned someone in Denver.  
10 Who is that?

11 A Tom Murray who is an investigator; he is  
12 now stationed in Washington.

13 Q What was the information that Mr. Murray  
14 provided you in 1994?

15 A You know, it is really hard, all of the  
16 information from these various people blurs  
17 together. But most of what I think he conveyed was  
18 how difficult the investigators were who were located  
19 in Kansas City and who had worked on the criminal  
20 referrals and their managers, in terms of assisting  
21 him in gathering information to respond to subpoenas,  
22 to continue the investigation and so on, and how

1 uncooperative they were, and how much they conveyed  
2 their feeling that he was a traitor by even  
3 cooperating with any lawyer in terms of carrying out  
4 his responsibilities.

5 And I don't remember if he specifically  
6 went into -- he probably did at different points --  
7 telling me some things that concerned him about their  
8 response, the hostility he was encountering.

9 Q What was Mr. Murray's involvement with the  
10 investigators in the Kansas City office?

11 A Well, he came in to be the chief  
12 investigator for us in our civil investigation that  
13 commenced in '94, and to help us pursue whatever we  
14 needed to pursue. And he needed to discuss matters,  
15 obtain documents or otherwise relate to the  
16 investigators in Kansas City, who would file the  
17 criminal referrals or to those who were managers of  
18 the investigation staff because they were supposed to  
19 cooperate to the extent that was required, even  
20 though they were not specifically working on the  
21 civil investigation, and that was his role.

22 Q Who in particular in the Kansas City office

1 did Mr. Murray have problems with?

2 A I don't recall, and I think you would have  
3 to ask him.

4 Q Okay. You mentioned information that  
5 investigators from the Kansas City office had  
6 impersonated FBI agents?

7 A Yes.

8 Q What exactly what that information?

9 A This goes back, I believe, to the spring of  
10 1994 or early summer, I can't place the timing now.  
11 But it was my understanding that why -- I don't know  
12 who got the call, whether it was Mark Gabrellian or  
13 Duane Curtis or outside counsel even got a call from  
14 Mr. Fiske's staff in Arkansas that they were outraged  
15 that investigators who had come into their office to,  
16 you know, chat with them and generally say they were  
17 around to help from the RTC had apparently gone out  
18 to potential witnesses and indicated or led people to  
19 believe that they were assigned to Mr. Fiske's staff  
20 or the FBI and were attempting to get additional  
21 information.

22 Q Which Kansas City office investigators were

1 reported to have impersonated FBI agents?

2 A I don't know their names but they were  
3 people who reported to Mr. Iorio.

4 Q Was Ms. Lewis one of them?

5 A I do not believe so.

6 Q What about Mr. Ausen?

7 A I don't recall. I have no idea.

8 Q Did you receive information that Mr. Iorio  
9 had approved or condoned in any way the investigators  
10 who reported to him having impersonated FBI agents?

11 A I have the clear impression that he was  
12 aware of their activities but I don't know how I  
13 received that. He certainly should have been aware  
14 of their pursuing the Whitewater matters, when he had  
15 represented repeatedly that they had concluded all  
16 they needed to do from a criminal point of view and  
17 his staff that was located in Kansas City was not  
18 handling the civil investigation. So they would have  
19 had no purpose at all to go to Arkansas unless the  
20 special counsel had asked for their assistance, and  
21 that was clearly not the case.

22 He should have known where his

1 investigators were and what they were spending time  
2 on if he was supervising them, so I drew the  
3 inference, if not having had direct information, that  
4 he was aware of their conduct.

5 Q When had Mr. Iorio represented that his  
6 investigators, his criminal investigators were no  
7 longer investigating the Madison case?

8 A I think he did that a number of times  
9 through 1994. Because, partially in response to the  
10 fact that Ms. Yanda, who had a number of PLS cases  
11 that had to be pursued as the statute of limitations  
12 continued to run and various matters, was having a  
13 great deal of difficulty getting attention from the  
14 investigators to perform their roles.

15 And when asked what they were occupied  
16 with, he kept representing that they were available.  
17 And when asked if they were still working on the  
18 criminal aspects, since they weren't working on the  
19 civil aspects, he kept saying no, they had wound it  
20 up or were about to wind it up.

21 I must tell you we were absolutely  
22 befuddled and couldn't understand what they thought

1 they were doing on a criminal matter, since there was  
2 a large staff of the special counsel's office that  
3 was working on it, but that's what he said they were  
4 doing.

5 MR. KRAVITZ: Thanks. That's all I have.

6 MR. ULWICK: I have no questions.

7 MR. BARTOLOMUCCI: I just have a couple.

8 EXAMINATION

9 BY MR. BARTOLOMUCCI:

10 Q Have you ever met Mr. Iorio, Mr. Ausen or  
11 Ms. Lewis?

12 A I know I've met Mr. Iorio on several  
13 occasions. I probably was introduced to Mr. Ausen on  
14 one or more occasions. I am not sure I have not met  
15 Ms. Lewis. I think she may have been at a meeting of  
16 the entire legal division staff in Kansas City that I  
17 went to, last spring I guess. But I didn't speak  
18 with her directly so I don't know that she was in  
19 fact there.

20 Q For Mr. Ausen and Iorio, can you tell me  
21 what time frame you think you met them?

22 A I don't know what first time was. At

1 various times, managers of the office of  
2 investigation came into Washington for meetings and I  
3 would attend staff meetings and say hello and go over  
4 some things, but certainly I know I met Mr. Iorio, at  
5 least probably in February of 1994, in Dallas; and  
6 then thereafter, a number of meetings, including the  
7 meeting that I referred to where I went to Kansas  
8 City the spring of this year.

9 Q Other than your attorney, did you speak  
10 with anyone in order to prepare for this deposition?

11 A I have spoken to a number of people to say  
12 that I would be attending this deposition, but I  
13 didn't call anyone to ask them about preparing for  
14 the deposition.

15 Q What about your prior depositions?

16 MR. ULWICK: What about them?

17 BY MR. BARTOLOMUCCI:

18 Q The same question. Did you speak to anyone  
19 in preparation for those?

20 A I am sure I did.

21 Q At what point in time did you review  
22 Mr. Ulwick?



1 THE WITNESS: I am looking to you for some  
2 guidance. I am trying to remember.

3 MR. ULWICK: If you don't recall don't  
4 guess.

5 THE WITNESS: I don't precisely recall.

6 BY MR. BARTOLOMUCCI:

7 Q Was it in connection with these Whitewater  
8 matters?

9 A Yes.

10 Q And that was the first time?

11 MR. ULWICK: You mean the first time she  
12 ever spoke to me was as a result of the  
13 Whitewater-related investigations?

14 BY MR. BARTOLOMUCCI:

15 Q Was that the first time you had engaged his  
16 counsel in connection with the Whitewater matter?

17 A Yes.  
18  
19  
20  
21  
22

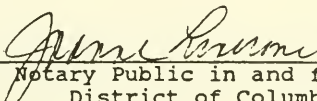
1 MR. BARTOLOMUCCI: Okay, thanks. Nothing  
2 further.

3 MR. KRAVITZ: That's it. Thank you.

4 (Whereupon, at 3:45 p.m., the deposition  
5 was concluded.)  
6

7 -----  
8 ELLEN B. KULKA  
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I, JOANNE LIVERANI, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
\_\_\_\_\_  
Notary Public in and for the  
District of Columbia

My Commission Expires

JULY 31, 2000



**DEPOSITION OF IRVIN B. NATHAN  
IN RE: S. RES. 120**

---

**FRIDAY, OCTOBER 27, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of IRVIN B. NATHAN, called for examination pursuant to notice of deposition, at 1:51 p.m. in Room 124 of the Dirksen Senate Office Building, before CARMEN BUNCH, a Notary Public within and for the District of Columbia, when were present:

LOUIS J. GICALE, Esq.  
Majority Deputy Special Counsel  
GLENN F. IVEY, Esq.  
Minority Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

CHARLES J. SGRO, Esq.  
U.S. Department of Justice  
Tenth Street & Constitution Avenue, NW  
Washington, DC 20530  
On behalf of the Deponent.

**APPEARANCES**

DARRYL W. JACKSON, Esq.  
Arnold & Porter  
555 Twelfth Street, NW  
Washington, DC 20004-1202  
On behalf of the Deponent.



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## 1                   P R O C E E D I N G S

2   Whereupon,

3                   IRVIN NATHAN

4   was called as a witness and, having first been duly  
5   sworn, was examined and testified as follows:

## 6                   E X A M I N A T I O N

7           BY MR. GICALE:

8       Q    Would you please state your name for the  
9   record.

10      A    Irvin Nathan.

11  
12  
13      Q    Your present business address?14      A    It's 555 12th Street, Northwest,  
15   Washington, D.C. 20004.

16      Q    Where are you currently employed?

17      A    I am a partner at the law firm of Arnold &  
18   Porter in Washington, D.C.19      Q    And how long have you been a partner at  
20   Arnold & Porter?21      A    First became a partner in 1975 and over a  
22   period of time, I have been a partner there for about

1 sixteen years, I guess.

2 Q Now, in 1993 -- strike that.

3 This deposition is being conducted pursuant  
4 to Senate Resolution 120. The resolution establishes  
5 a Special Committee administered by the Banking  
6 Committee to conduct an investigation involving  
7 Whitewater Development Corporation, Madison Guaranty  
8 Savings & Loan Association, Capital Management  
9 Services, Incorporated, the Arkansas Development  
10 Finance Authority and other related matters.

11 Section 1(b)(2)(c) of Senate Resolution 120  
12 authorizes an investigation and public hearings into  
13 whether the Department of Justice has improperly  
14 handled RTC criminal referrals relating to Madison  
15 Guaranty Savings & Loan Association or Whitewater  
16 Development Corporation. This will be the focus of  
17 today's deposition.

18 You've been requested to testify before the  
19 Committee and have your deposition taken today. This  
20 deposition is being taken in advance of a public  
21 hearing which will occur in November. It is possible  
22 you may testify at that hearing.

---

1 You are testifying obviously under oath.

2 We're asking you a series of questions and if you  
3 don't understand them, please let us know.

4 The stenographer is preparing a record of  
5 the questions and answers. The deposition will be  
6 treated as Committee confidential until the  
7 commencement of the hearings. Prior to the hearings,  
8 you will receive a letter from the Committee telling  
9 you that you may come to the Senate to review the  
10 transcript of your deposition and make notes of any  
11 corrections from transcription on the errata sheet.

12 If you are called to testify at a public  
13 hearing you will be permitted to have a copy of your  
14 deposition transcript four days in advance of your  
15 testimony. You may be represented by counsel. I  
16 note you have counsel here today with you.

17 A I do.

18 Q Objections to the form of questions will be  
19 noted for the record. Counsel may object on grounds  
20 of privilege or relevance. The Committee chairman  
21 may rule on objections where the witness refuses to  
22 answer a question.

1 Mr. Nathan, you were employed with the  
2 Department of Justice, I believe, in 1993; is that  
3 correct?

4 A As of September 1, 1993, I was employed by  
5 the Department of Justice, correct.

6 Q And how long did you serve and in what  
7 capacity?

8 A I served from September 1, 1993 to April 7,  
9 1994 and full-time, I served as the principal  
10 associate Deputy Attorney General.

11 Q I take it after April 7, 1994 that's when  
12 you returned to Arnold & Porter?

13 A After that time I returned to Arnold &  
14 Porter, correct.

15 Q And prior to going to the Department of  
16 Justice in September of 1993, you were at Arnold &  
17 Porter as well?

18 A Correct, that is correct.

19 Q How long were you there prior to September  
20 1, 1993?

21 A Well, I was first at Arnold & Porter in  
22 1968, and I left Arnold & Porter in 1979 to go to the

1 Department of Justice. And I left the Department of  
2 Justice in 1981 and I returned to Arnold & Porter in  
3 1981. I was with Arnold & Porter continuously  
4 between 1981 and August 30, 1993.

5 Q Now, are you aware of the Committee's  
6 request to the Department of Justice to produce  
7 documents with respect to this matter?

8 A No.

9 Q Do you have any documents in your custody  
10 or control with respect to this matter?

11 A The only documents that I have are ones  
12 that I received recently from the Department of  
13 Justice which I understand was previously provided to  
14 the Committee. I did not take any documents related  
15 to this matter with me when I left the department in  
16 April of 1994.

17 Q What are the documents that were provided  
18 to you?

19 A These are documents that relate to the  
20 recusal of Ms. Casey, things of that sort.

21 Q You have those in your possession here  
22 today?

1 A No.

2 Q But you have them in your possession  
3 someplace?

4 A Yes, I have them in my office.

5 Q In your office. Do you know what those  
6 records consist of? I just want to get a sense of  
7 what you had an opportunity to review before your  
8 testimony today.

9 A The principal ones that I recall are a  
10 memorandum that Jack Keeney wrote sometime in  
11 September of 1993 and one or two E-mail messages that  
12 I either, according to the documents, sent or  
13 received. There are one or two other documents, I  
14 don't recall what they were, but they all relate to  
15 the -- oh, there's a letter from Paula Casey to Phil  
16 Heymann in November of 1993 announcing her recusal.  
17 Those are the kinds of matters.

18 Q The Keeney memorandum, do you recall the  
19 date of that memorandum?

20 A I think it's approximately September 21,  
21 but I'm not certain, of '93. If you have it, I can  
22 identify. I believe it's to the FBI.

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1 Q I'm showing you what's marked for  
2 identification as Bates number 002047, a memorandum  
3 to director of the Federal Bureau of Investigation  
4 dated September 21, 1993 from John C. Keeney  
5 regarding subject, David L. Hale. Is that the  
6 memorandum you were referring to?

7 A Well, I didn't have any marginal notes on  
8 my copy other than maybe Mr. Keeney's signature, and  
9 I don't know what's on the document, but the text of  
10 this memo is the same as what I have received.

11 Q Now, have you spoken to anyone who you know  
12 the Committee has deposed here or who you know that  
13 the Committee expects to depose in this matter with  
14 respect to the substance of your testimony today?

15 A Well, I haven't spoken to anyone who has  
16 been deposed here concerning their deposition nor  
17 their testimony. I don't know whether the Committee  
18 intends to depose Mr. Heymann, who was my superior at  
19 the Department of Justice, and many months ago I did  
20 have a conversation with him about this matter.

21 Q And did you talk -- you talked to him about  
22 the substance of -- that was before I guess you were



1 asked to --

2 A It was long before I was asked to be a  
3 witness.

4 Q Did you talk about the substance of what  
5 had occurred during that time period?

6 A Yes, we did.

7 Q What was the nature of your conversation?

8 A It was to refresh each other's  
9 recollections about what had happened.

10 Q What do you recall saying to him had  
11 happened at that point in time?

12 A You know, it's hard for me to recall the  
13 conversation with Mr. Heymann on that topic. It was,  
14 in essence, the same matters to which I have  
15 previously been interviewed by the FBI and have  
16 testified in a grand jury for the independent counsel  
17 in Whitewater. And it relates to the events -- my  
18 conversation with Mr. Heymann related to my  
19 recollection principally, I was principally  
20 recollecting in that conversation for his benefit the  
21 events that occurred relating to the recusal of Paula  
22 Casey.

1 Q Now, just so you understand, I do not have  
2 the benefit of the FBI's interview.

3 A I understand. And I don't have a  
4 transcript or clear recollection of my conversation  
5 with Mr. Heymann, but it was my best recollection  
6 which I'm prepared to give to you today on the same  
7 matter.

8 Q Do you recall what Mr. Heymann said to you  
9 in terms of his recollection of those events?

10 A It generally comported with my  
11 recollection.

12 Q Mr. Nathan, when did you first hear of an  
13 RTC criminal referral relating to Madison Guaranty or  
14 Whitewater Development Corporation?

15 A The first time I heard anything about this  
16 matter was in mid-September 1993, when I received a  
17 phone call from a reporter for The New York Times  
18 named Jeff Gerth who advised me that a lawyer for a  
19 target in the U.S. Attorney's office in Little Rock  
20 was claiming that he was having a difficult time in  
21 dealing with the U.S. Attorney's Office there and  
22 that he was claiming that he had some information,

1 but that he couldn't make an appropriate arrangement  
2 at the U.S. Attorney's Office. That was the first  
3 time that I had any knowledge or information  
4 regarding anything relating to the RTC or any of the  
5 criminal referrals.

6 Q Did you know Mr. Gerth prior to receiving  
7 this call in mid-September 1993?

8 A Yes.

9 Q How is it that you knew Mr. Gerth?

10 A From professional acquaintances, from my  
11 prior years at the Department of Justice.

12 Q When you say "professional  
13 acquaintances" --

14 A He is a reporter who covered aspects of  
15 matters at the Department of Justice, and I dealt  
16 with him when he was a reporter and I was at the  
17 Department of Justice.

18 Q In your stint from '79 to '81?

19 A Correct.

20 Q Would that be the extent of your  
21 relationship with him from -- did you speak with him  
22 between '81 and the time you came back to the

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1 department in 1993?

2 A It's possible I spoke to him. If so, it  
3 was in a professional capacity as a reporter, he may  
4 have called once or twice over 12 years on some  
5 matter. I don't really recall.

6 Q You didn't represent him or anything?

7 A No.

8 Q Now, when you came into the deputy's office  
9 in September, that was not a position for which you  
10 had to be confirmed?

11 A Correct.

12 Q And you were not there as a consultant  
13 prior to assuming your responsibilities in September;  
14 correct?

15 A I was not.

16 Q Who were you to answer to at that point in  
17 time? Was that Mr. Heymann exclusively?

18 A Well, he was my immediate supervisor. I  
19 assume I also had to answer to the Attorney General.

20 Q When you came into the department in  
21 September of 1993, were you briefed by either  
22 Mr. Heymann or Attorney General Reno or anyone you

1 supervised with respect to pending criminal actions  
2 of significant nature?

3 A Not that I recollect.

4 Q Did you receive, while you were in that  
5 position, significant case reports of any sort on a  
6 periodic basis?

7 A I got no regular reports on any pending  
8 criminal investigations.

9 Q How would you be alerted as to whether or  
10 not significant matters would be pending either in  
11 main Justice or in the U.S. Attorney's offices across  
12 the country?

13 A On an ad hoc basis. If there was some  
14 action that the deputy's office needed to take with  
15 respect to it.

16 Q But strictly ad hoc, no summaries of  
17 significant cases that you can recall receiving?

18 A That's a correct statement.

19 MR. IVEY: I'm sorry, what was that  
20 answer?

21 THE WITNESS: It was a correct statement.

22 BY MR. GICALE:

1 Q Now, the office you worked in,  
2 Mr. Heymann's office, were there other deputies to  
3 him?

4 A Yes.

5 Q Who else was a deputy to him at that point  
6 in time?

7 A When I first arrived, David Margolis was a  
8 deputy to Mr. Heymann, Lori Robinson was a deputy. I  
9 think I'm leaving one out. There were other people  
10 obviously who worked there, including some people who  
11 had been seconded there, like Roger Adams and Gary  
12 Katzman. There may have been one other deputy whose  
13 name escapes me at the moment.

14 Q How were the deputies' responsibilities  
15 divided up?

16 A This was a long time ago and I don't really  
17 recollect. We had a number of principal  
18 jurisdictional assignments. I was the principal  
19 associate and I dealt with arranging the staff  
20 meetings and helped in parceling out assignments.  
21 Certain matters were assigned on a regular basis to  
22 the particular deputies, for example matters relating

1 principally to the FBI or the criminal division were  
2 assigned to David Margolis as a career associate in  
3 the deputy's office. Lori Robinson had  
4 responsibilities in juvenile Justice and in the  
5 office of Justice programs and matters of that sort.  
6 There was a document that listed the principal areas  
7 of responsibility of various deputies, but I don't  
8 recall them all now.

9 Q When you arrived there, Webster Hubbell,  
10 was he confirmed in his position?

11 A I believe he was confirmed. He was  
12 certainly there and he was in place as the Associate  
13 Attorney General.

14 Q Who did he answer to?

15 A He reported to the Attorney General.

16 Q Did he report to you or Mr. Heymann under  
17 any circumstances?

18 A He never reported to me, and I don't  
19 believe there was any circumstance in which he  
20 reported to Mr. Heymann.

21 Q Now, while you were there, what would  
22 Mr. Hubbell's duties as Associate Attorney General

1 have been?

2 A He had supervision with respect to  
3 principally the civil side of the Department of  
4 Justice during the time that I was there. A number  
5 of divisions reported directly to him, such as the  
6 civil division, antitrust division, tax division,  
7 immigration and naturalization, other entities of  
8 that sort.

9 Q Did he have any responsibility for the  
10 criminal division?

11 A He did not.

12 Q When you had staff meetings, if there were  
13 matters relating to the criminal division that came  
14 up, would he be present for those meetings?

15 A I don't recall Mr. Hubbell being at a staff  
16 meeting with the deputy's office.

17 Q What about a staff meeting with the  
18 Attorney General?

19 A Yes, he was present for staff meetings of  
20 the Attorney General.

21 Q Would pending criminal investigations as  
22 well as civil matters be brought up at those

1 meetings?

2 A I would say it would generally be rare that  
3 a particular investigation would come up at those  
4 meetings, but it certainly could have happened,  
5 including criminal investigation.

6 Q During any meetings that you were aware of  
7 while you were at the department and Mr. Hubbell was  
8 present with the Attorney General or the deputy, were  
9 the Whitewater, Madison or allegations against  
10 Mr. Hale, Clinton and Tucker discussed?

11 A No.

12 Q Now, in September when you received this  
13 phone call from Mr. Gerth, did he give you any more  
14 details at that point? And by the way, do you have a  
15 specific date that you received a phone call?

16 A I believe it was the Saturday before the  
17 September 21 memo of Mr. Keeney.

18 Q Did he give you any more specifics in that  
19 first phone call?

20 A Yeah. He did give me specifics. I don't  
21 recollect them now. Some of them are memorialized in  
22 Mr. Keeney's memo.

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1 Q Well, we've got various copies of this  
2 memo, and I want to make sure you get a clean copy to  
3 the extent we have one. The cleanest I have is  
4 004660, and it's again a September 21, 1993 memo to  
5 the director from Jack Keeney.

6 Now, the object of this memo was to, as I  
7 understand it, compile the information that the  
8 department had received or he had received to date.  
9 And from the various sources, including yourself, the  
10 FBI in a teletype from August -- I'm sorry, there was  
11 a September 17 teletype from the FBI referring to the  
12 opening of an investigation in August of '93. And he  
13 was also including some information he had received  
14 with respect to the reporter's contact with an FBI  
15 agent in Little Rock, as I understand it; correct?

16 A You're asking me if that's your correct  
17 understanding? I have no knowledge of why Jack wrote  
18 that memo.

19 Q He didn't discuss the memo with you?

20 A No.

21 Q Well, he sent you a copy; correct?

22 A Correct.



1 Q Well, you've reviewed the memorandum and  
2 it's your statement here today that as he recounts  
3 your version of this, and by the way, I'm referring  
4 to page 2 of this memorandum, the second full  
5 paragraph wherein he starts the paragraph by saying  
6 "As I told Assistant Director Larry Potts," and he  
7 refers to a high-ranking official at the Department  
8 of Justice. Is that you?

9 A I don't know if I was high ranking, but I  
10 think he is referring to me there, yes.

11 Q Now, in that memo he indicates that you  
12 wanted to keep the individual who had contacted you,  
13 Mr. Gerth's, identity confidential at that point; is  
14 that correct?

15 A That is correct.

16 Q Why is that?

17 A Because Mr. Gerth asked me to do that, and  
18 I agreed to do that at that time.

19 Q Now, he goes on to relate in the following  
20 paragraphs, recount his recollection of what you  
21 informed him with respect to your conversation with  
22 your informant, at that time unnamed. And after

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1 having reviewed that, does that accurately reflect  
2 what you conveyed to him in terms of the information  
3 you received from the reporter at that point in time?

4 A It's essentially correct, the best I can  
5 recall it at this time.

6 Q Now, in this conversation with Mr. Gerth,  
7 how did he describe Mr. Tucker and Mr. Clinton's  
8 conduct in this affair?

9 A First of all, he wasn't purporting to have  
10 any direct knowledge about Mr. Clinton or  
11 Mr. Tucker. What he was suggesting was that Mr. Hale  
12 had some information about Mr. Clinton, who then I  
13 think was Governor Clinton, and Mr. Tucker relating  
14 to events back in 1986 and that Mr. Hale was  
15 interested in trading that information in return for  
16 immunity for his conduct in this SBA loan. And what  
17 Mr. Gerth was principally advising me was the view  
18 that Mr. Coleman had, which would be Mr. Hale's  
19 lawyer, that he was not getting a favorable reception  
20 at the U.S. Attorney's Office with respect to his  
21 proposal.

22 My principal response to Mr. Gerth was that

1 if Mr. Coleman was not happy with the way he was  
2 being treated in the U.S. Attorney's Office, that the  
3 Department of Justice did not have an unlisted number  
4 and that he could call Mr. Keeney in the criminal  
5 division and take up his concerns.

6 Q Well, at that time he indicated to you that  
7 the allegation from Mr. Hale was that Mr. Clinton and  
8 Mr. McDougal had encouraged Hale to provide funds to  
9 Madison Guaranty prior to an audit to bring the  
10 Whitewater loans acceptably up-to-date; is that  
11 correct?

12 A I don't know. What are you referring to?

13 Q I'm referring to the last paragraph of the  
14 second page.

15 A As I understand it, through triple hearsay,  
16 that was what Mr. Gerth was suggesting to me that he  
17 had learned from Mr. Coleman, that Mr. Hale might  
18 say.

19 Q That Mr. --

20 A That Mr. Hale might say. My understanding  
21 was that none of this information had been proffered  
22 to the U.S. Attorney's Office, that Mr. Coleman was

1 refusing to provide information to the U.S.  
2 Attorney's Office until they had agreed in advance to  
3 give him immunity, to give his client, Mr. Hale,  
4 immunity.

5 Q Now, in what detail did he describe the  
6 conduct of Mr. Tucker?

7 A I don't recall any specifics.

8 MR. IVEY: Just for clarity, the "he" is  
9 Mr. Gerth or Mr. Keeney?

10 MR. GICALE: No, Mr. Gerth.

11 BY MR. GICALE:

12 Q Describe the conduct of Jim Guy Tucker  
13 based on his conversations with Hale.

14 A I really don't recall any details of  
15 Mr. Gerth's report or Mr. Coleman's assertions or  
16 what Mr. Hale would say about Mr. Tucker.

17 Q Do you recall whether or not he referenced  
18 a loan to Dean Paul for \$825,000 in 1986?

19 A To who?

20 Q Dean Paul.

21 A Dean Paul?

22 Q Yes.

1 A I don't recall the name Dean Paul in  
2 connection with this memo.

3 Q Do you recall whether or not he told you  
4 that a loan had gone from Madison Guaranty to an  
5 individual for approximately \$825,000 and that some  
6 of the proceeds of that loan went to Susan McDougal  
7 from Master Marketing and some of the proceeds went  
8 to Governor Tucker, a firm owned by him called Castle  
9 Sewer & Water?

10 A That does not sound familiar to me.

11 Q What about the \$300,000 loan?

12 A I do recall something about a \$300,000 loan  
13 to a company in which Mrs. McDougal was a principal  
14 on some notion and that it was entitled to a minority  
15 business preference.

16 Q And he also told you that Hale believed  
17 some of those funds eventually went to Whitewater to  
18 benefit the Clintons; is that correct?

19 A Look, I don't recall this conversation in  
20 any great detail, and I was not there to receive any  
21 kind of a proffer from Mr. Coleman. If it's not in  
22 this memo, which I don't see it, I don't think it

1 probably happened, but I just don't recall.

2 Q After reviewing this memo, is this  
3 consistent with the information? And I'm referring  
4 to the paragraph starting with "As I told Larry  
5 Potts" where he relates the information, you're the  
6 high ranking official he's referring to. And I  
7 believe the story he relates goes through to the next  
8 page, I believe the second full paragraph starting  
9 with "The Department official." After --

10 A That's correct. And you know, I don't know  
11 that he talked to Mr. Potts. I don't know everything  
12 that's here, but what is related in this memorandum  
13 reflecting my conversation with Mr. Keeney is  
14 essentially accurate and accords with my recollection  
15 of what Mr. Gerth told me in that conversation on a  
16 Saturday in September of 1993.

17 Q When you say it's essentially accurate,  
18 where is it inaccurate?

19 A I don't know. I haven't read it in great  
20 detail and I don't recollect the conversation. The  
21 details of what Mr. Coleman had apparently told  
22 Mr. Gerth were not that critical to me, so I don't

1 know if this is 100 percent accurate. It is  
2 generally along the lines of the conversation I had  
3 with Mr. Gerth.

4 I did not note at the time when I saw this  
5 memo any significant inconsistency between that and  
6 what I told Mr. Keeney.

7 Q Now, you received this information on a  
8 Saturday. When did you relate it to Mr. Keeney?

9 A Probably on that Monday.

10 Q The --

11 A The following Monday.

12 Q And how did you notify him that you had  
13 received this information?

14 A I don't recollect whether it was by  
15 telephone or in person.

16 Q Did you attend a meeting with other  
17 officials from the Department of Justice to discuss  
18 the information you had received from Mr. Gerth?

19 A I first communicated the information to  
20 Mr. Heymann, and I believe that was on that same  
21 Saturday. And it was Mr. Heymann's suggestion that I  
22 communicate it to Mr. Keeney and also talk to

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1 Mr. McDowell about it to see what they knew about  
2 this matter.

3 Q On that Saturday or on Monday?

4 A Well, that was his suggestion to me on  
5 Saturday, which I carried out on Monday.

6 Q Who was the first person you talked to, was  
7 that Keeney?

8 A First person I talked to was Mr. Heymann.

9 Q No, after you talked to Mr. Heymann.

10 A I don't recollect whether I talked with  
11 Keeney before I talked to Mr. McDowell or vice  
12 versa. I talked to both of them on Monday morning, I  
13 would say.

14 Q And in each instance when you talked to  
15 them, did you relate this what Mr. Gerth had told to  
16 you to each of them?

17 A I believe so. I did not identify Mr. Gerth  
18 at that time to either of them, but I gave them the  
19 substance of what he had told me.

20 Q So you related this to Heymann, Keeney,  
21 McDowell. Anyone else?

22 A The Attorney General.

1 Q When did you relate it to her?

2 A I don't know whether it was on the Saturday  
3 or on Monday, but it was one of those two days.

4 Q Was that in person or by phone?

5 A In person.

6 Q When you talked to Mr. Heymann about it,  
7 was that in person?

8 A Yes, it was in person.

9 Q Was the Attorney General present when you  
10 talked to Mr. Heymann about this?

11 A After I talked to Mr. Heymann, the two of  
12 us went and saw the Attorney General and I believe it  
13 was on that Saturday. It's possible that it was the  
14 next business day.

15 Q Now, when you talked to Mr. Heymann about  
16 it, did you talk about the existence of a prior  
17 criminal referral with respect to Madison Guaranty?

18 A I don't think I knew anything about a prior  
19 criminal referral until I talked to Mr. McDowell.

20 Q Was Mr. Heymann aware of a prior criminal  
21 referral?

22 A Well, you'll have to ask him, but he did

1 not tell that to me.

2 Q What about the Attorney General, did she  
3 reference the prior criminal referral?

4 A She did not reference that to me.

5 Q Do you know whether or not she was aware of  
6 it at that point?

7 A I don't know.

8 Q What did the Attorney General say to you  
9 with respect to this once you related this  
10 information to her?

11 A She suggested that Mr. Heymann and I handle  
12 this in a manner that we thought appropriate.

13 Q Manner that you what?

14 A In a manner that we believed appropriate.

15 Q Now, after you related the information that  
16 you had to Mr. Keeney, either by phone call or in  
17 person, what happened next?

18 A My recollection is Mr. McDowell said he  
19 would look into this and get back to me and reported  
20 to me what he understood had happened in this matter  
21 before. Mr. McDowell told me that sometime during  
22 the presidential election in 1992, that there had



1 been some criminal referrals from the RTC to the U.S.  
2 Attorney's office in Little Rock. And that the  
3 then-U.S. Attorney in Little Rock had referred the  
4 matter to main Justice, suggesting that he thought he  
5 should recuse himself from the matter and I believe  
6 his office should be recused from the matter.

7 And that the fraud section of the  
8 Department of Justice had examined that request and  
9 had concluded sometime in early 1993 that there was  
10 no reason that the U.S. Attorney's office in Little  
11 Rock should recuse itself and that it sent the matter  
12 back, along with a note to the effect that there was  
13 no need to recuse and that if the U.S. Attorney's  
14 Office saw that there was no -- I believe that there  
15 was no prosecutorial merit in the matter, that would  
16 be a reasonable judgment, something along those  
17 lines.

18 And so Mr. McDowell told me that was the  
19 background to the referral situation and told me that  
20 so far as he knew, the U.S. Attorney's Office was now  
21 handling the Hale matter. And I believe that he  
22 supplied me with an exchange of correspondence

1 between Mr. Coleman and Assistant U.S. Attorney in  
2 Little Rock, the gist of which was that Mr. Coleman  
3 was asking for immunity for his client. And the U.S.  
4 Attorney's Office was saying something to the effect  
5 that they wanted Mr. Hale to plead guilty to one  
6 felony count and that thereafter they would be glad  
7 to hear his proffer and take it into account in  
8 connection with the sentencing or something along  
9 those lines.

10 Q These communications with the U.S.  
11 Attorney -- between the U.S. Attorney's office in  
12 Little Rock and the attorney, Mr. Coleman,  
13 Mr. McDowell brought these over or faxed these over  
14 to your office?

15 A I don't think he faxed them, but I don't  
16 recall how I got them exactly. I either got them  
17 from Mr. McDowell, interoffice mail or something like  
18 that, or I may have received them from Mr. Gerth. I  
19 don't know, but I know that I received it. I had  
20 subsequent calls with Mr. Gerth beyond the one that I  
21 described. And he may have referred to this  
22 correspondence and he may have provided them to me.

1 One of the two provided them to me. I don't recall.

2 Q What I would like to know is when you  
3 called him on that Monday, was he already aware of  
4 the correspondence between Mr. Coleman and the U.S.  
5 Attorney's Office?

6 A That wasn't my impression. My impression  
7 was that he looked into it and this is what he found.

8 Q After you called him, he looked into it?

9 A That's my understanding.

10 Q Now, between the call from Mr. Gerth on  
11 Saturday and your first conversation with Mr. Keeney  
12 and Mr. McDowell on Monday, did Mr. Gerth call again?

13 A Between Saturday and Monday?

14 Q Yes.

15 A No.

16 Q Or did you call him?

17 A No.

18 Q Now, one of the pieces of correspondence  
19 from the attorney involved in this case indicated  
20 some dissatisfaction and concern as to whether or not  
21 the U.S. Attorney there, Paula Casey, was in a  
22 position to handle this fairly; is that correct?

1 A Well, I don't know if that was in  
2 correspondence. That was the gist of what Mr. Gerth  
3 was conveying that Mr. Coleman had suggested to him,  
4 that because Ms. Casey had been appointed by  
5 President Clinton, that she and her office were not  
6 in a position to handle this matter.

7 Q After receiving the information with  
8 respect to the update on the criminal referral  
9 received in 1992 and the information with respect to  
10 the correspondence between Mr. Coleman and the U.S.  
11 Attorney's office in Little Rock, did you receive any  
12 other information from Mr. McDowell? If not, what  
13 did you proceed to do?

14 A You know, there may have been some other  
15 information from Mr. McDowell. I don't want to  
16 suggest that's the universe, but those were the  
17 highlights of what I can recall. I asked him,  
18 Mr. Keeney, to monitor that situation and to consider  
19 whether any recusal was appropriate there.

20 Q After receiving the information from  
21 Mr. McDowell, after having him go out and determine  
22 what the status of the matters was at that point in

1 time, did you eventually all meet in Mr. Keeney's  
2 office or meet someplace in the Department of Justice  
3 on that day, on Monday?

4 A I really don't recall a meeting. It's  
5 possible, but -- I don't want to say all meet. You  
6 mean Mr. Keeney, Mr. McDowell and myself? I don't  
7 recall a meeting of the three of us. It's very  
8 possible, but I met with Jack Keeney in his office.

9 Q What about Mr. Gangloff?

10 A It is certainly possible, but I don't have  
11 a specific recollection. I see that he's copied on  
12 the memo.

13 Q In the memo of the 21st, Mr. Keeney not  
14 only relates the information that you've conveyed to  
15 him, but he also refers to the information that he  
16 had received from the FBI in the teletype of  
17 September 17, 1993. And then, as I indicated  
18 earlier, information that he'd received from the head  
19 of the FBI office in Little Rock. Were you made  
20 aware of that information as well on Monday the 20th?

21 A No. First time I knew about this is when I  
22 read this memo.

1 Q Do you know whether or not Mr. McDowell was  
2 aware of this information on the 20th?

3 A No.

4 Q Now, when you said there should be some  
5 consideration given with respect to recusal, did you  
6 get more specific than that?

7 A No, I don't believe so.

8 Q Did you discuss the reasons for recusal by  
9 Ms. Casey?

10 A I didn't have any reasons for recusal, and  
11 I didn't have any information beyond that which  
12 Mr. Gerth had given to me which I had transmitted to  
13 Mr. McDowell and Mr. Keeney.

14 Q Were you --

15 A I had never heard of Paula Casey before.

16 Q Now, when you discussed this matter with  
17 Mr. Heymann and Attorney General Reno on Saturday, at  
18 the point in time when you related Mr. Gerth's  
19 information to you, did you discuss the issue of  
20 recusal with the Attorney General and Mr. Heymann?

21 A There was certainly no detailed  
22 conversation about it. We didn't have much

1 information and the objective was to get information,  
2 and the people who were going to get the information  
3 were Mr. McDowell and Mr. Keeney.

4 Q So by sometime Monday, the information you  
5 had obtained was this exchange of correspondence, you  
6 had obtained --

7 A Wait. I don't know that I got the  
8 correspondence on Monday. I didn't mean to suggest  
9 that to you. I transmitted the information I had  
10 from Mr. Gerth to them on Monday. They got it back  
11 to me at some later time, I don't know when, and the  
12 correspondence came in at a later time still.

13 Q Do you know whether or not they discussed  
14 the existence of the correspondence on that Monday?

15 A I don't know. I would strongly doubt it.

16 Q And do you know whether or not they called  
17 either Paula Casey or one of her assistants in Little  
18 Rock at their office while you were present?

19 A They did not call that office in my  
20 presence.

21 Q That office or the individuals I've just  
22 mentioned, Paula Casey or Fletcher Jackson or Michael

1 Johnson from that office?

2 A They did not call those individuals in my  
3 presence.

4 Q Now, in addition then to the information  
5 with respect to the first referral, did you have that  
6 information on the first day, the 20th, do you know?

7 A I don't believe I ever had any information  
8 about the referrals, and I certainly don't know that  
9 I had it on Monday the 20th.

10 Q Well, you testified earlier that  
11 Mr. McDowell gave you a status report as to the  
12 referral that came in in 1992.

13 A Yes, but I didn't have the referral. I had  
14 information from Mr. McDowell that the matter had  
15 been referred to the U.S. Attorney's Office, U.S.  
16 Attorney's Office had asked about recusal. This was  
17 information Mr. McDowell related to me.

18 Q Did you have that on that Monday?

19 A I don't know.

20 Q Do you recall whether or not that what  
21 you've testified up to now is the total of  
22 information you had on the 20th before anything else

1 was done?

2 A I have given you information that goes  
3 beyond the 20th. This wasn't departmentalized by  
4 24-hour periods. I don't know whether Mr. McDowell  
5 got back to me. I asked him for information on  
6 Monday. I don't know how long it took for him to get  
7 back to me.

8 Q What's the next thing you recall happening  
9 after asking Mr. McDowell and Mr. Keeney to obtain  
10 this information for you?

11 A Well, I got the information back, as I've  
12 already described. It was sometime that week, but I  
13 don't recall what date.

14 Q Now, at minimum, the report is dated  
15 September 21, 1993 from Mr. Keeney to the director  
16 which you were copied on. Do you know when you would  
17 have received that?

18 A I don't know how I received it.

19 Q You did receive a copy of it, yes?

20 A I have no reason to doubt it. I don't  
21 specifically recollect it.

22 Q In any event, after asking them to obtain

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1 this information for you, what's the next thing that  
2 happened?

3 A At some point, I talked again to Mr. Gerth  
4 and by the time I talked to Mr. Gerth the second  
5 time, I was aware that Mr. Gerth had spoken to FBI  
6 personnel about this matter. And as a result, I told  
7 Mr. Gerth that I could no longer honor his  
8 confidentiality request because I was concerned that  
9 a misleading impression was being created that there  
10 were two sources for the allegations when in fact he  
11 was the only source to the government that I was  
12 aware of on this subject. So I told him that I would  
13 no longer honor that and wanted to make it clear to  
14 people at Justice that I was dealing with -- that he  
15 was the person that called me, and he agreed that was  
16 fine.

17 So thereafter, I communicated that Gerth  
18 had been the person who called me on that weekend.

19 Q Who did you communicate that to?

20 A Mr. Keeney and Mr. McDowell.

21 Q Now, when you talked to Mr. Heymann and the  
22 Attorney General, did you convey to them the source



1 of your information?

2 A No.

3 Q In addition to conveying to Mr. Keeney and  
4 Mr. McDowell the fact that Mr. Gerth was the source  
5 of your information, did you also convey that to  
6 Mr. Heymann and the Attorney General?

7 A I don't recall speaking again to the  
8 Attorney General on this subject. I'm sure I did  
9 tell Mr. Heymann that Mr. Gerth was the source.

10 Q After that conversation with Mr. Gerth,  
11 what is the next thing you recall happening with  
12 respect to this matter?

13 A I recall that at some point, we asked  
14 Mr. Keeney to contact Ms. Casey and to ask whether  
15 she thought that she should recuse herself from the  
16 matter and that Mr. Keeney reported back that he had  
17 had a conversation with her and that she declined to  
18 recuse herself and seemed to take some personal  
19 affront at the suggestion that she recuse herself.

20 Q Prior to asking Mr. Keeney to contact  
21 Ms. Casey about the recusal matter, had you discussed  
22 whether or not Ms. Casey should be recused with

1 Mr. Heymann, the Attorney General and Mr. Keeney?

2 A Well, as I said, I don't recall any further  
3 conversations with the Attorney General beyond the  
4 first day. As to a conversation with Mr. Heymann,  
5 I'm confident that we did have at least one, focusing  
6 on whether or not it wouldn't be prudent for  
7 appearance purposes to recuse Ms. Casey and her  
8 office from the matter. And -- but again, we didn't  
9 have enough information on the subject. We thought  
10 it was a possible approach and we asked Mr. Keeney to  
11 contact her and to discuss all the circumstances and  
12 inquire of her whether she thought with an abundance  
13 of caution it made sense to recuse, and that's what  
14 happened.

15 Q Now, do you know what date it was that he  
16 contacted her?

17 A I don't know.

18 Q Do you know what information he obtained  
19 from her with respect to what she knew at the time  
20 regarding the allegations against Mr. Clinton,  
21 Mr. Tucker?

22 A No, I would suggest that he would be the

1 appropriate person to ask that.

2 Q Do you recall what he told you?

3 A I've told you what he told me was that she  
4 declined to recuse herself, she saw no need for it.

5 Q He did not tell you at that point in time  
6 what information she had available to make her  
7 decision?

8 A Correct.

9 Q Now, after receiving that response from  
10 Mr. Keeney -- strike that.

11 Prior to having him call, were you or  
12 Mr. Heymann or Mr. Keeney of the opinion that Paula  
13 Casey should recuse?

14 A I can't speak to what their opinions were.  
15 My view was that we didn't have enough information to  
16 make that judgment, we didn't know what the Hale  
17 proposed indictment was about. And I had the  
18 distinct impression that Mr. Coleman was declining to  
19 provide the information to the government that Judge  
20 Hale might be in a position to proffer. So it all  
21 seemed quite speculative to me and I couldn't reach  
22 any judgment on that issue.

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1 Q Well, do you know whether or not  
2 Mr. Heymann related to you whether he had reached a  
3 judgment as to that issue?

4 A He did not communicate to me that he had  
5 reached any judgments on this issue.

6 Q What about Mr. Keeney?

7 A No, he did not, either.

8 Q After Mr. Keeney reported this to you,  
9 reported the fact that she declined to recuse herself  
10 from the matter, what is the next contact that you  
11 had with respect to this?

12 A Well, what I remember next essentially is  
13 that there was a newspaper article that came out  
14 sometime in either late October or early November in  
15 an Arkansas newspaper relating to either the actual  
16 indictment of Judge Hale or the possible indictment  
17 of Judge Hale and allegations in the paper from the  
18 lawyer for Judge Hale about information that Judge  
19 Hale had regarding a loan that went to the  
20 McDougals.

21 And that article had, as I recall it, more  
22 detail than I had recalled Mr. Gerth providing to me

1 earlier, but they were essentially along the same  
2 lines. And this article led to the convening of a  
3 meeting in Washington in the Deputy Attorney  
4 General's office with a number of people from  
5 criminal division in the department and Ms. Casey to  
6 discuss again the possibility of her recusal.

7 Q Now I'm going to show you what is marked  
8 for identification as Bates number 007763, and it is  
9 a copy of -- it's 763 through 767, a copy of an  
10 article entitled "Judge expects to be indicted in SBA  
11 loans." At the top there is a date typed in,  
12 September 23, 1993 from the Arkansas  
13 Democrat-Gazette. Is that the article you're  
14 referring to?

15 (Witness reviewed the document.)

16 A It's very possible that this is the article  
17 that I was referring to, but my recollection was that  
18 the article came out sometime after that date,  
19 sometime in October or November, but I could be  
20 wrong. It's very possible that that's the one.

21 Q In any event, the article related in  
22 considerable detail some of the transactions that you

1 had related to Mr. Keeney that Mr. Gerth had  
2 discussed with you; correct?

3 A That is correct.

4 Q The article you referred to discussed  
5 Mr. Clinton and Mr. McDougal approaching Mr. Hale  
6 about moneys, obtaining moneys from his SBIC to be  
7 turned over to Mr. McDougal's wife to be used to  
8 benefit either Madison Guaranty and/or Whitewater  
9 Development Corporation; is that correct?

10 A Well, the article speaks for itself, but a  
11 lot of the information was similar to what I had  
12 received from Mr. Gerth.

13 Q This article does speak for itself, but you  
14 haven't indicated whether or not this is the article  
15 you read.

16 A And I don't know. You know, I notice that  
17 the date is typed in, it's not from the paper  
18 itself. I'm just having a hard time squaring my  
19 recollection, but the article came out several weeks  
20 after the conversation I had with Gerth, not a couple  
21 of days.

22 Q The conversation you had with Gerth was --

1 first conversation was September 17?

2 A I told you it was on the Saturday before  
3 the September 21st. I didn't say September 17. I  
4 don't know about the dates.

5 Q Saturday the 20th.

6 A Right.

7 Q So the 18th?

8 A Right.

9 Q So you believe sometime within a couple of  
10 weeks there was an article, you don't know the  
11 specific date?

12 A I don't know the date of the article.

13 Q And do you believe the article was either  
14 this article or something similar to this article?

15 A Yes, it was either this article or another  
16 article.

17 Q Well, this article or an article that  
18 related to the information in this article. Would  
19 you like an opportunity to read the article?

20 (Witness reviewed the document.)

21 A It was either this article or one very  
22 similar to it that I saw that I recollect.

1 Q So that you had information within a couple  
2 weeks of your first phone call from Mr. Gerth, either  
3 from this article or an article very similar to it,  
4 or did you have the benefit of Mr. Keeney's memo  
5 dated September 21, 1993?

6 A Yes, upon reflection, I think I had seen  
7 the Keeney memo prior to my second call with  
8 Mr. Gerth because that's what led me to suggest to  
9 Mr. Gerth that there was some potential for confusion  
10 in my maintaining the confidentiality agreement since  
11 that memo was described in a separate conversation  
12 he'd had with FBI official, so I think I learned that  
13 from reading the Keeney memo.

14 Q Now, how many days after Mr. Gerth first  
15 called did you talk to him again?

16 A I don't know.

17 Q Would it have been within two or three days  
18 or a week?

19 A Within a week.

20 Q Within a week. Now, the Keeney memo of  
21 September 21 talks about information that the FBI had  
22 as of August 1993 from a teletype dated September 17,

1 1993. As a result of reviewing this Keeney  
2 memorandum, did you attempt to obtain a copy of the  
3 FBI teletype to determine exactly what they had?

4 A No.

5 Q Did you have any discussions with FBI  
6 officials about the information they had as of August  
7 of 1993?

8 A No.

9 Q I'm going to represent to you that this  
10 memo appears to conclude or represent that the FBI  
11 had information with respect to allegations at least  
12 with respect to Mr. Tucker as early as August of 1993  
13 and Mr. McDougal as early as August 1993 and  
14 allegations with respect to President Clinton as of  
15 September 17, 1993; correct?

16 A You're going to represent that to me when  
17 you say it's correct? I don't know. The memo speaks  
18 for itself.

19 Q Well, that's what the memo says. So there  
20 were allegations against Mr. Tucker that the --

21 A There are not allegations. You know, as  
22 far as I was concerned, this was a report by a

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1 newspaper reporter telling me what a lawyer for a  
2 potential indicted defendant might say if he got a  
3 proposed deal. And what I suggested to Mr. Gerth was  
4 I didn't understand why a sophisticated defense  
5 lawyer would be taking this matter to the press. He  
6 could go to the U.S. Attorney's Office and if he  
7 wasn't happy with the arrangement that he had at the  
8 U.S. Attorney's Office, he could take the matter to  
9 the criminal division of the Department of Justice.  
10 I gave him the name of Mr. Keeney and suggested he go  
11 there. That was my involvement in this matter and I  
12 was not doing this investigation.

13 Q I understand that, but that's not the only  
14 information in this memo. The information in the  
15 memo is not just information from Mr. Gerth but  
16 information that the FBI received in August of 1993;  
17 correct?

18 A That's what the memo says. It's not a memo  
19 to me. It's a memo to the FBI.

20 Q I understand that, but you received a copy  
21 of this memo?

22 A That's correct.



1 Q And you at least were aware in that first  
2 week that there was, according to Mr. Keeney, there  
3 was information from Gerth that he had received via  
4 Gerth through you, via Gerth through the head of the  
5 FBI in Little Rock and also information that the FBI  
6 had in August of 1993 unrelated to Gerth; correct?

7 A Are you asking me if that's what the memo  
8 says?

9 Q Yes.

10 A Yeah, that's what the memo says and the  
11 memo speaks for itself.

12 Q And you knew that to be the case after you  
13 read that memo or did you have some reason to  
14 question that?

15 A I had no reason to question anything that's  
16 in this memo.

17 Q But at least at that point in time, you as  
18 a result at least of reading this memo and as a  
19 result of reading the newspaper article at some point  
20 within roughly two weeks after Mr. Gerth called you,  
21 there was now information from a number of sources  
22 with respect to allegations against Mr. Tucker and

1 Mr. Clinton; correct?

2 A No.

3 Q Well, you had information in the September  
4 21, 1993 memorandum; correct?

5 A You said from a number of sources. The  
6 only source I'm aware of is what Mr. Coleman was  
7 suggesting to Mr. Gerth that Hale might say. I'm not  
8 aware of other sources. And another thing was an  
9 investigation being conducted by the FBI, you say  
10 reflected in August, this is September, one month  
11 later.

12 Q Just to get the record straight, it's not  
13 what I say. It's what is reflected in this  
14 memorandum which you received a copy of.

15 MR. IVEY: For my clarity, what reference  
16 in this memo to August are you referring to, which  
17 one?

18 MR. GICALE: The first paragraph of the  
19 memorandum where it refers to a teletype dated  
20 September 17, 1993 from --

21 THE WITNESS: That has nothing to do, that  
22 paragraph, so far as I can see it, says nothing with

1 respect to either Mr. Tucker or Mr. Clinton.

2 BY MR. GICALE:

3 Q Well, were you made aware of specific --  
4 what it talks about is a loan, a loan from Madison  
5 Guaranty to an individual now cooperating to purchase  
6 realty owned by a company controlled by David Hale.  
7 And then what it also talks about is that \$300,000 of  
8 the loan -- proceeds of the loan went to the wife of  
9 James McDougal, Susan McDougal doing business as  
10 Master Marketing; correct?

11 A Look, I really don't want to sit here to go  
12 over -- the document states what it states, and I can  
13 tell you it states nothing in any teletype about  
14 either Mr. Clinton or Mr. Tucker. It talks about  
15 Mr. McDougal and Madison Guaranty and David Hale.

16 Q Right, and the \$300,000 loan to  
17 Mr. McDougal's wife?

18 A That is referenced in that paragraph,  
19 correct.

20 Q Doing business as Master Marketing?

21 A Please. You know, I don't see any useful  
22 purpose in reciting this memo to me. If you want to

1 ask me what I did and what I recollect, I'm happy to  
2 tell you. I don't want to parse this memo into the  
3 record.

4 Q Do you know whether or not this refers to  
5 the Dean Paul transaction and --

6 A I told you I've never heard of Dean Paul.

7 Q Did you ask any questions about the  
8 particular transaction that the FBI was referring to  
9 in this memo?

10 A You mean the teletype? No, I didn't have  
11 any conversations with the FBI, I didn't ask any  
12 questions about it.

13 Q Now, you received this call from Mr. Gerth  
14 on the Saturday before the 20th of 1993, and this  
15 article appeared sometime within the next several  
16 weeks. Why was --

17 A The article that I recollect was published  
18 in October or early November to the best of my  
19 recollection. That's my best recollection. I see  
20 this article you've handed to me with a typed date on  
21 it in September. And it looks like an article that I  
22 may have seen, certainly an article from a Little

1 Rock newspaper, but I don't recall, as we sit here,  
2 the date of it. My recollection of the date is later  
3 than you are saying.

4 Q Just so you understand, the Committee did  
5 not type this date on there. This was a document  
6 that we received from the Department of Justice.

7 A I'm just giving you my best recollection.

8 Q And the reason I'm asking about the date  
9 and the approximate timing of the article is because  
10 the meeting that occurred in Washington in  
11 Mr. Heymann's office wasn't until November 3, and  
12 obviously it's a significant period of time, between  
13 September 23 and November 3. That's more than a few  
14 weeks, and the reason I'm asking about it is why  
15 would there have been a delay? And I take it you  
16 don't think that there was, based on your  
17 recollection of when you --

18 A Right, I don't recall a substantial delay  
19 between the public disclosure and the meeting, but  
20 it's possible that there was and I don't know why it  
21 didn't take place in the interim. I can tell you, as  
22 I have told you, that the question of the recusal of

1 Paula Casey was raised with her by Mr. Keeney. And  
2 they are the ones with the information that went on  
3 in Little Rock and at that time they declined to  
4 recuse themselves. At a later time in early November  
5 there was a meeting in the deputy's office in which  
6 the matter was discussed further, reviewed and she  
7 and her office recused themselves.

8 Q Do you know whether or not Mr. Keeney told  
9 Ms. Casey that he thought she should recuse before  
10 the November 3 meeting?

11 A I have the impression that he raised that  
12 that might be a positive idea, it might be a good  
13 idea, and she did not think it was and she declined.

14 Q That was in the initial conversation when  
15 you asked him to talk to her about it; is that  
16 correct?

17 A That's the only conversation I know that he  
18 had. It's possible that he had more than one, but I  
19 only remember one.

20 Q Other than seeing the article sometime  
21 between receiving this information on September 20,  
22 1993 and your meeting on November 3, did you receive

1 any other updates on the status of any of these  
2 investigations or the investigation with respect to  
3 Mr. Hale or any upcoming referrals related to Madison  
4 Guaranty or Mr. Tucker from the RTC?

5 A That's quite a compound question, with all  
6 due respect.

7 Q I'll withdraw it.

8 A I don't know all the predicates there. I  
9 can tell you, I didn't have anything to do with any  
10 of the referrals from the RTC to the U.S. Attorney's  
11 Office and I don't believe I ever saw them while I  
12 was at the Department of Justice. And in terms of  
13 getting any updates other than learning, A, that the  
14 U.S. Attorney's Office had declined to recuse itself,  
15 and B, that it was moving ahead with the indictment  
16 of Judge Hale on the separate charge, I don't recall  
17 getting any updates on this matter.

18 Q Do you recall whether or not Ms. Casey or  
19 someone from her office was instructed to tell  
20 Mr. Coleman that he could contact the Department of  
21 Justice if he wanted to enter into some plea  
22 discussions with someone other than her office?

1 A I don't recall any such direction from  
2 anybody at Justice or the U.S. Attorney's Office.

3 Q Now, did you have any other calls with  
4 Mr. Gerth after the second phone call wherein you  
5 disclosed to him that you'd have to reveal his name  
6 as a source?

7 A It's very possible that I had one more  
8 conversation with Mr. Gerth. I don't specifically  
9 recall. It would have been along the same lines of  
10 the other call.

11 Q Did he give you any additional information  
12 in that other call that you remember?

13 A He told me at one time that he had  
14 interviewed Judge Hale at some length, he believed  
15 that Judge Hale had taken a lie detector test and  
16 while he couldn't vouch for Judge Hale, he believed,  
17 that is Gerth, that there was something to what Hale  
18 was saying.

19 Q Now, other than seeing the article, other  
20 than perhaps this other conversation with Gerth, did  
21 you have any other contact with respect to this case  
22 until --

- 1 A I had the ones I described for you before.  
2 Q Are you talking about McDowell and Keeney?  
3 A Correct.  
4 Q Right. But after that -- of course you --  
5 A They may have contacted me again.  
6 Mr. Keeney must have talked to me and said that he  
7 had talked to Paula Casey and she was not inclined to  
8 recuse herself, that kind of thing.  
9 Q And you don't recall whether or not you  
10 received any additional updates on the case?  
11 A Correct.  
12 Q The next significant event that you recall  
13 is November 3 and the meeting in Mr. Heymann's  
14 office?  
15 A Well, I don't recall the date. I have seen  
16 a calendar entry that was dated November 3, and I  
17 have no reason to doubt that was the date of the  
18 meeting. I do recall a meeting in Mr. Heymann's  
19 office with Ms. Casey and others on the subject.  
20 Q Who asked that that meeting be called?  
21 A Mr. Heymann.  
22 Q And how did that come about?
- 

- 1 A Mr. Heymann thought that there was a good  
2 possibility that a recusal was in order here and he  
3 wanted to meet personally with the U.S. Attorney and  
4 learn the fact about the investigation and about her  
5 relationships, if any, with Mr. Clinton and with  
6 Mr. Tucker and to discuss all of the factors and to  
7 reach an informed and sensible judgment about whether  
8 she should be recused or her office should be  
9 recused.  
10 Q Prior to going into the meeting, what was  
11 he basing his interest in seeking whether or not --  
12 in determination as to whether or not she should  
13 recuse herself?  
14 A All information I've previously advised you  
15 about, that is the information communicated by Gerth,  
16 the newspaper stories, the information that the FBI  
17 was developing and all the other information that had  
18 come to our attention.  
19 Q Do you know whether or not he was  
20 considering the latest referrals from the RTC with  
21 respect to Madison and Mr. Tucker at the point when  
22 he decided to call this meeting?



1 A I have no knowledge that he had any  
2 information about any referrals from the RTC. I did  
3 not.

4 Q Would --

5 A I do recollect learning somewhere in this  
6 period that someone from the RTC had contacted the  
7 U.S. Attorney's Office to ask what had happened about  
8 previous referrals that had been made. I don't  
9 recall exactly when I learned about that, but that  
10 was in this time frame as well.

11 Q Do you recall being informed as to whether  
12 or not Ms. Casey had declined the referral that you  
13 discussed with Mr. McDowell, the 1992 referral, in  
14 October of 1993?

15 A I don't recall what had happened with  
16 that. At some point Ms. Casey told me that she had  
17 understood the matter had been declined and was a  
18 closed matter prior to her coming on as the U.S.  
19 Attorney.

20 Q Now, was that at a point before the  
21 November meeting with Mr. Heymann?

22 A It may well have been in that meeting or in

1 a conversation connected to that meeting.

2 Q Can you tell us who was present for the  
3 meeting? Is it November 3?

4 A I think that's a reasonable approximation.  
5 I don't have it committed to memory, but it was about  
6 that time.

7 Q Who was present at that meeting, do you  
8 recall?

9 A Mr. Heymann was there and Ms. Casey was  
10 there and I believe Mr. Keeney was there, and  
11 Mr. McDowell was there and Mr. Urgenson of the fraud  
12 section. It's possible Mr. Margolis was there,  
13 although no firm recollection of him, and possibly  
14 Mr. Gangloff was there, although I don't have a firm  
15 of him.

16 Q Mr. Moscato?

17 A It's possible that he was there. I don't  
18 think he contributed.

19 Q And what do you recall being said at the  
20 meeting and by whom?

21 A I recall Mr. Heymann explaining that he had  
22 called the meeting to decide whether recusal was

1 appropriate and wanting to know what was going on in  
2 the Hale investigation and where it stood, and how  
3 far along that case was, and also wanting to know  
4 what the background of Ms. Casey was and what  
5 relation, if any, she had had with the President or  
6 the First Lady or Governor Tucker. Ms. Casey  
7 responded to these questions and indicated that the  
8 case against Judge Hale was quite far along, that  
9 they were prepared --

10 Q Who indicated that?

11 A Ms. Casey, I said she responded that the  
12 case was quite far along against Judge Hale, either  
13 had been indicted or was about to be indicted, I  
14 don't recall which. They were prepared to try it and  
15 they had spent a lot of time on developing that case  
16 and that these press assertions by Judge Hale had  
17 nothing to do with the case, the SBA case that they  
18 were prepared to try, and that she thought her office  
19 was in a very good position to handle that case and  
20 wanted to do that.

21 She indicated, I think, that she was not  
22 closely affiliated with the President. I can't

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1 recall whether she said that she was a student of his  
2 at one time. I know that she had been teaching at  
3 that law school where he had previously taught. Of  
4 course she had been appointed by the President. She  
5 indicated that she and her husband were both business  
6 and personal friends of Governor Tucker and possibly  
7 Governor Tucker's wife, I don't recall.

8 Q What was the business relationship with  
9 Mr. Tucker?

10 A I don't recall. It was some rental  
11 property, I don't recall exactly what the connection  
12 was. He may have rented a space in a building that  
13 they owned or vice versa.

14 Q Did she indicate whether or not her husband  
15 was working in the governor's office or in a job with  
16 the governor's office or state of Arkansas?

17 A I don't recall anything about such  
18 employment, but it was clear that there was a  
19 personal and professional relationship of some kind  
20 between Ms. Casey and her husband on the one side and  
21 Governor Tucker on the other.

22 Q Do you recall whether or not she indicated

1 she had gone to law school with Governor Tucker and  
2 his wife?

3 A I don't recall, but it's possible.

4 Q Now, when she said that the allegations in  
5 the press had nothing to do with the SBA case that  
6 they had indicted, did she get more specific than  
7 that?

8 A I don't recall.

9 Q Now, when she updated all of you with  
10 respect to information as to the status of the Hale  
11 case, did she talk to you at all about the Dean Paul  
12 case? And I know I asked you that before.

13 A I told you I've never heard the name Dean  
14 Paul before.

15 Q Did she talk to you at all about a \$150,000  
16 loan to Castle Water & Sewer, which would have been  
17 owned by Governor Tucker?

18 A Not that I recollect.

19 Q Did she tell you at all that the FBI had  
20 information about a \$300,000 loan to Master Marketing  
21 and Susan McDougal?

22 A I don't recall.

1 Q After she related these things to all of  
2 you, then what happened?

3 A The essence of it was that Mr. Heymann  
4 believed that under the circumstances, it would be  
5 appropriate for her to recuse herself and her office  
6 from this matter, and the discussion then turned to  
7 how to accomplish that result.

8 Q Did she agree with that?

9 A Well, I think she was resistant, and her  
10 basis for resisting, I think, was that her people had  
11 put in a lot of work on the Hale indictment and that  
12 they were prepared to go forward with it, and this  
13 was taking away that matter from them after a lot of  
14 hard effort. And second, that she appeared, it is my  
15 perception to believe, that a recusal would somehow  
16 reflect badly on her and on her ability to be  
17 dispassionate about these matters.

18 Q Did she discuss at that meeting the  
19 additional RTC referrals?

20 A Not that I recall.

21 Q Now, the other individuals that were at the  
22 meeting, Mr. Keeney, Mr. McDowell, Mr. Urgenson,

1 Mr. Margolis, Mr. --

2 A I'm not certain Mr. Margolis was there.

3 Q Or Mr. Gangloff and perhaps Mr. Moscato,  
4 were they all in agreement with Mr. Heymann on this,  
5 or did they indicate whether they were in agreement  
6 with Mr. Heymann?

7 A I don't recall any opposition by them.  
8 They were focusing more on how the matter would be  
9 handled and who would take on the responsibility for  
10 the investigation if that office were to be recused.

11 Q Did she indicate to you in that meeting  
12 that she had made a representation in September of  
13 1993 to the FBI that she would recuse, but it was  
14 only a matter of time?

15 A I don't recall that.

16 Q Now, the recommendation that she recuse  
17 herself from these was based, then, I take it, on  
18 clearly her relationship with the Tuckers and then  
19 the appearance with respect to Mr. and Mrs. Clinton;  
20 is that correct?

21 A I don't know that it was parsed out. I  
22 think that recusal was based on the totality of

1 circumstances and included the fact that the Tuckers  
2 were involved and that there was a relationship  
3 between the Tuckers and Ms. Casey and her husband.

4 Q Do you think that it would have been  
5 appropriate for her to have had the benefit of  
6 reviewing the allegations against Mr. Tucker in some  
7 RTC referrals before making a decision as to whether  
8 or not she should recuse herself?

9 A I really don't think it's useful for me to  
10 speculate.

11 Q Well, isn't it normally the case that when  
12 relationships like this exist, that the recusal  
13 should take place before someone gets an opportunity  
14 to review these kinds of allegations in a criminal  
15 setting?

16 A I really don't understand the question.

17 Q Well, as a Justice official in two  
18 instances, I mean do you think it would have been  
19 appropriate for her to review allegations against  
20 Mr. Tucker before she made a decision as to whether  
21 or not she should recuse herself from a case  
22 involving Mr. Tucker when she had this kind of

1 relationship with him?

2 A Well, by answering -- I don't know what she  
3 reviewed prior to this meeting or at any prior time.  
4 I don't know what facts were made available to her  
5 office by that time. I still had the impression that  
6 Mr. Coleman was refusing to provide information. And  
7 as I told you, I did not see the referrals, so I  
8 don't know what was in them or what she had seen.

9 Q Assuming that she had seen referrals with  
10 allegations against Governor Tucker with respect to  
11 the diversion, for instance, of proceeds of a loan  
12 from Madison Guaranty, do you think that it would  
13 have been appropriate for her to recuse herself after  
14 reviewing those kinds of allegations, or would it  
15 have been more appropriate to recuse herself prior to  
16 reviewing those kinds of documents?

17 A Look, I really can't be of assistance  
18 here. I can tell you what happened and judgments  
19 will be made by people who have all the facts  
20 available to them, which I do not.

21 Q After it was determined by Mr. Heymann, and  
22 I gather some of the others, that Ms. Casey should

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1 recuse herself from these matters, what steps were  
2 taken or what decision was made as to how this would  
3 be accomplished?

4 A Well, first of all, at the meeting it was  
5 determined that if she recused herself and her  
6 office -- and she was still going to think about that  
7 upon leaving the meeting -- that the matter would be  
8 taken over by the criminal division, and the acting  
9 head of that division was Mr. Keeney. And it  
10 appeared to be the tentative judgment at that meeting  
11 that the matter would be handled by a group of  
12 lawyers from the fraud section that Mr. Keeney and  
13 Mr. Urgenson and I guess Mr. McDowell had selected,  
14 people who were career professionals and in whom they  
15 had great confidence. And they urged that if there  
16 were recusal, that they take over the entire matter,  
17 that is the indictment of Judge Hale, as well as any  
18 proffer or allegations that Judge Hale might make  
19 regarding others.

20 Q What about with respect to any referrals  
21 from the RTC?

22 A The entire matter, that they would take



1 over everything that was related in any way to this.

2 Q And again, do you recall whether or not it  
3 was discussed in this meeting whether or not she  
4 declined on the initial referral to the RTC, the  
5 September 1992 referral?

6 A Do you mean do I have a different  
7 recollection from the last time you asked me about  
8 that five minutes ago? I don't recall that coming up  
9 at the meeting.

10 Q When did it come up?

11 A I don't recall it coming up.

12 Q I thought that you testified that she said  
13 something to you about that at or about the time of  
14 the meeting. Maybe I'm incorrect.

15 A She had said with respect to some previous  
16 referral it had been her understanding that it had  
17 been closed out before she had arrived at the U.S.  
18 Attorney's Office.

19 Q Did she relate that to everybody in the  
20 meeting or to you separately?

21 A I have a vague recollection of hearing that  
22 separately from her at some point.

1 MR. IVEY: Can we take a short break?

2 MR. GICALE: I'm sure he's anxious to go,  
3 but that's up -- how long do you want to take?

4 THE WITNESS: I have no objection to taking  
5 a short break.

6 (Recess.)

7 BY MR. GICALE:

8 Q So that when this meeting was over, the  
9 matter with respect to her recusal -- the decision  
10 was left up to her, it was still an open matter;  
11 however, the --

12 A The deputy had made it pretty clear what he  
13 thought was the proper resolution, but he left it to  
14 her to mull it over. And I believe that later that  
15 day, she called me and said that she had decided she  
16 was going to recuse and that she would be sending a  
17 letter to that effect shortly.

18 Q Now, I'm going to show you what's marked  
19 for identification as Bates number 018791. This is  
20 an E-mail message dated November 2, 1993 at 11:07  
21 a.m. It's from you, subject: McDougal. Who was  
22 this to, do you know?

1 A I don't know. My informed speculation is  
2 that this would be to Mr. McDowell, but I'm not  
3 certain.

4 MR. SGRO: Is there an identification  
5 number on that?

6 MR. GICALE: 018791.

7 BY MR. GICALE:

8 Q Now, this is a memo to perhaps Mr. McDowell  
9 prior to the meeting of November 3 in preparation for  
10 the November 3 meeting; is that correct?

11 A Correct.

12 Q And when you refer to "Phil and Jo Ann  
13 would like to be in on this in the near future,"  
14 you're referring to Phil Heymann, I take it?

15 A Phil relates to Phil Heymann.

16 Q Jo Ann relates to?

17 A It would relate to Jo Ann Harris, who at  
18 the time was in the department, but had not yet been  
19 confirmed, to the best of my recollection, as the  
20 Assistant Attorney General in the criminal division.  
21 And she was there on a consulting basis. I don't  
22 recall her being at the meeting, although it's

1 possible she was there.

2 Q Now, you say that after the meeting, you  
3 had a separate discussion perhaps with Ms. Casey with  
4 respect to the declination of the 1992 RTC referral?

5 A I have a vague recollection of speaking to  
6 her about that and her belief that the matter had  
7 been closed out before she arrived in the U.S.  
8 Attorney's Office.

9 Q Did you discuss anything else with her on  
10 that date with respect to these cases?

11 A I don't recollect anything.

12 Q Now, is there anything further that  
13 happened that day with respect to Hale or the other  
14 related allegations that you all expected her to  
15 recuse herself from?

16 A Not that I recollect. She advised that she  
17 was going to recuse herself and the letter was going  
18 to be forthcoming, and I believe I communicated that  
19 to either Mr. Keeney or Mr. McDowell and told them to  
20 gear up and prepare to take the matter over as  
21 promptly as possible.

22 Q I'm going to show you what's marked for

1 identification as Bates number 017510. This is a  
2 memorandum from Paula Casey to Mr. McDowell regarding  
3 recusal attaching -- it's dated November 8, 1993,  
4 attaching a letter from her to Phillip Heymann dated  
5 November 5, 1993 regarding the United States of  
6 America versus David Hale. This is the recusal  
7 letter that you ultimately received from her, a copy  
8 of that?

9 A Is there a question?

10 Q Is this a copy of the letter you ultimately  
11 received from her if you recall?

12 A I believe so. I don't have it memorized  
13 but it's a letter along these lines.

14 Q Now, the letter does not state specific  
15 reasons why she's recusing herself. Do you know why  
16 that is?

17 A I don't know why she wrote the letter. She  
18 drafted the letter.

19 Q Was there any discussion in the meeting  
20 about her stating the reasons for recusing herself  
21 when and if she did that?

22 A I do not recall any discussion of the

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1 content of the letter.

2 Q Was the fact that there was an absence of  
3 reasons in the letter, specific relationships in the  
4 letter, discussed after receiving the letter in an  
5 attempt to amplify that at some later point?

6 A I really don't understand your question.

7 Q Was the fact that the specific individuals  
8 that she had a relationship with were not listed in  
9 the letter and more specific reasons were not given  
10 in the letter, was that the subject of any concern  
11 within the department?

12 A No, not that I'm aware of.

13 Q When is the next time you had anything to  
14 do basically with this issue, either the recusal  
15 issue or the Madison/Hale or the allegations related  
16 to it?

17 A Well, I had nothing further to do with the  
18 recusal aspect. The only other thing that I can  
19 recall having to do with this was when there were  
20 public calls for an independent or special counsel to  
21 take over the investigation, and I consulted with  
22 Mr. Heymann about that matter.

1 Q Were you involved at all with respect to  
2 the return of SBA documents from the White House?

3 A Yes. I had a conversation about that.

4 Q Who did you have a conversation with and  
5 how were you involved with that?

6 A It's a little vague, but what I recall is  
7 that at some point, I learned from people in the  
8 deputy's office that the FBI was concerned about the  
9 fact that someone in the White House counsel's office  
10 had sought some documents from the SBA and had  
11 obtained some documents. And I recall that after  
12 that, I had a conversation with Neil Eggleston, an  
13 attorney in the White House counsel's office,  
14 inquiring about what this was all about. And  
15 Mr. Eggleston told me that --

16 Q You were inquiring of him?

17 A I was inquiring of him and he responded.  
18 He told me that the White House counsel's office had  
19 seen in the newspaper that a Congressional committee  
20 had requested the production of documents from SBA  
21 relating to Whitewater or Madison Guaranty. And that  
22 according to the newspaper article, the SBA had

1 provided documents to the Congressional committee and  
2 the White House counsel's office had decided to ask  
3 the SBA to provide the identical documents that had  
4 gone up on the Hill to the White House so that the  
5 White House would be in a position to respond to any  
6 inquiries relating to that from the Congressional  
7 committee.

8 Q Did he say anything else with respect to  
9 the White House's reason for obtaining those  
10 documents?

11 A Not that I recall. They would be in a  
12 position to respond to questions based on the fact  
13 that Congressional staff had those documents,  
14 something like that.

15 Q Did you, in turn, say anything to him with  
16 respect to the desires of the department to have  
17 those documents returned to the SBA?

18 A Yes. I suggested that this was not prudent  
19 on their part and suggested to them that they return  
20 the documents to SBA, that they not copy the  
21 documents and that anybody who had seen the documents  
22 should recuse themselves from participating in any

1 White House activities regarding this matter.

2 Q Recuse themselves from any White House  
3 activities regarding which matter?

4 A Any of the investigations relating to  
5 Whitewater.

6 Q Did he indicate to you who had seen the  
7 documents?

8 A Not that I recall.

9 Q And did you indicate to him why you  
10 believed it was not prudent?

11 A I don't recollect exactly what I told him  
12 in that regard, but my view was that since it's  
13 possible that people there might be under  
14 investigation for this, it wouldn't be appropriate  
15 during the course of investigation for them to have  
16 access to government documents that other people  
17 didn't have access to.

18 Q Who were the people you were referring to?

19 A I had no idea who was going to be involved  
20 in that matter.

21 Q But when you were referring to people who  
22 may be subjects of this investigation, who were you

1 referring to?

2 A Anyone whose name was associated with the  
3 investigation.

4 Q Including the Clintons; correct?

5 A Including the Clintons, correct.

6 Q Now, I know you said that you inquired of  
7 Mr. Eggleston. Did Mr. Eggleston call you first or  
8 do you recall?

9 A I don't recollect.

10 Q Do you know whether or not Mr. Carver from  
11 the fraud section first called Mr. Eggleston and he  
12 refused to turn them over until he talked to you?

13 A I don't know that.

14 Q After telling him that these documents  
15 should be turned over, did you have any further  
16 conversation with him?

17 A It's possible I had one more conversation  
18 with him. I don't really recollect.

19 Q And as a result of that conversation, did  
20 he agree to return them to the SBA or did he indicate  
21 he had to consult with someone first?

22 A I think he indicated to me he was going to



1 consult with Mr. Nussbaum on the subject.

2 Q Did there come a point in time when you had  
3 another conversation with him wherein he indicated  
4 that he had talked to Mr. Nussbaum and it had been  
5 agreed that they would return the documents to the  
6 SBA?

7 A I have the impression that they returned  
8 the documents. I don't recollect where I got that  
9 impression from.

10 Q Do you know whether or not the Department  
11 of Justice, in particular the fraud section in  
12 conjunction with the FBI, proceeded with respect to  
13 an investigation revolving around the individuals  
14 who -- strike that.

15 Do you know whether or not FBI agents were  
16 then instructed to interview people who had received  
17 either SBA documents or copies of those documents at  
18 the White House?

19 A I don't know that.

20 Q And therefore, I take it you've never seen  
21 a report or copies or summaries or copies of  
22 interviews from an investigation, if that occurred?

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1 A I have not seen such documents.

2 Q Did you become involved at any point with  
3 respect to the turning over of documents to the  
4 Department by Mr. Kendall on behalf of the Clintons?

5 A No.

6 Q Now, going back to November 3, 1993, on  
7 that date, I'll show you what's marked for  
8 identification as Bates number 016848. This is --

9 MR. IVEY: What was that number again?

10 MR. GICALE: 016478.

11 THE WITNESS: The number here is 016848.

12 BY MR. GICALE:

13 Q In any event, this is a document dated  
14 November 3, 1993. It's a memorandum for the Attorney  
15 General, Deputy Attorney General, acting Assistant  
16 Attorney General for the criminal division from Web  
17 Hubbell regarding the subject matter, recusal. And  
18 you were cc'd on this memo and it references some  
19 prior discussions that apparently Mr. Hubbell had  
20 with you, and his determination to recuse himself  
21 regarding any pending matter dealing with Madison  
22 Guaranty Savings & Loan or Mr. and Mrs. James

1 McDougal. Now, do you recall receiving a copy of  
2 this recusal memorandum?

3 A Yes.

4 Q Do you recall the discussions that led up  
5 to this recusal memorandum?

6 A I recall one discussion. That discussion  
7 was in the middle of September of 1993, shortly after  
8 I had had my first conversation with Mr. Gerth, and I  
9 was discussing that conversation with Mr. Heymann in  
10 Mr. Heymann's office when Mr. Hubbell came into  
11 Mr. Heymann's office.

12 Mr. Hubbell asked what we were talking  
13 about, and I suggested to Mr. Hubbell that he recuse  
14 himself from this matter and that he not ask for  
15 information about it. I explained that it related to  
16 Madison Guaranty and to individuals in Arkansas. And  
17 he agreed with me and he did not ask for any further  
18 information and I never discussed the matter with him  
19 again.

20 Q Now, do you know what efforts, if any, were  
21 made to recuse himself from that date forward, recuse  
22 him or his office or to isolate him from receiving

1 any information with respect to these matters?

2 A Well, I'm not familiar with anything that  
3 his office did with respect to this prior to my  
4 receipt of this memo, the November 3 memo from  
5 Mr. Hubbell, and I'm not aware of anyone discussing  
6 the matter with Mr. Hubbell at any time thereafter.  
7 And Mr. Heymann and I were aware that he was recused  
8 and we never raised the matter or discussed the  
9 matter in his presence.

10 Q Now, when you say he asked you what this  
11 was about, he came in in the middle of the  
12 conversation? Or how exactly did it occur?

13 A That's about the way it was. I don't  
14 remember specifically, but I was in Heymann's office  
15 and was discussing the allegations that I had  
16 received from Gerth, and he came in and may have  
17 overheard some part of that and asked what it was  
18 about and I responded as I previously advised you.

19 Q Now, do you know why he waited until  
20 November 3, 1993 to issue this memorandum?

21 A I do not.

22 Q Had you received this memorandum prior to

1 your meeting with Paula Casey in Mr. Heymann's office  
2 when you all discussed her recusal?

3 A I don't recall when I received a copy of  
4 this memorandum.

5 Q Was the subject of his recusal in this  
6 matter discussed at that meeting?

7 A Not that I recall.

8 Q Was it discussed on that day subsequent to  
9 the meeting?

10 A Not that I recall.

11 Q Do you know whether or not his recusal was  
12 in any way related to this meeting?

13 A I don't.

14 Q Did there come a time after you received  
15 various pieces of information with respect to this  
16 case, these cases, the Hale case and the criminal  
17 referral received in 1992, that you received a copy  
18 of the criminal referral, C0004? And I'm going to  
19 show you what's marked as Bates number 000511 through  
20 531.

21 (Witness reviewed the document.)

22 A To the best of my recollection, I never saw

1 these referrals or these documents while I was at the  
2 Department of Justice.

3 Q Have you seen them since?

4 A Well, it's possible that in interviews that  
5 have been conducted since that time, that the FBI has  
6 had with me or in other contexts, something like that  
7 may have been shown to me. I don't know exactly.  
8 But I don't think I ever saw the referrals or  
9 documents you showed me any time while I was at the  
10 Department of Justice.

11 Q Do you know whether Mr. Hubbell had access  
12 to a copy of this referral or any of the subsequent  
13 referrals or -- this referral?

14 A I do not.

15 Q Do you know whether or not he had access to  
16 the information with respect to Mr. Hale and  
17 Mr. Hale's indictment and the allegations he was  
18 making to you?

19 A When you say he had access, he was  
20 Associate Attorney General. By that position, he  
21 could have made inquiries. But whether he did and  
22 whether he received it, I have no idea.

1 Q Well, he was the Associate Attorney  
2 General; however, the criminal division was not  
3 answerable to him; is that correct?

4 A That is correct.

5 Q However, in his position, if he had asked,  
6 for instance, for information from an Executive  
7 Secretariat or other places, it's possible that he  
8 could have gained access to this information?

9 A It would be speculating. I have no  
10 knowledge of his asking for information, no knowledge  
11 about any response to any such request.

12 Q And again, the same would hold true with  
13 respect to information with respect to Mr. Hale and  
14 also the subsequent referrals from the RTC?

15 A I don't understand the question.

16 Q Well, would he have had access to that  
17 information as well, subsequent referrals received by  
18 the Department from the RTC?

19 A I don't have any information about any  
20 information that was provided to him or any requests  
21 he made for information, and it would just be  
22 speculation about what a response to him would have

1 been had he asked.

2 Q And I believe you testified at the  
3 beginning that you never had any discussions with him  
4 with respect to either this first referral or any of  
5 the other subsequent referrals or the Hale matter,  
6 other than the conversation in Mr. Heymann's office?

7 A That is correct.

8 Q Is that correct?

9 A That is correct.

10 Q I'm going to show you what's marked for  
11 identification as Bates number 111277, and this is a  
12 phone message slip. I'm going to represent to you  
13 that it's from Judge Hubbell's logs. There's a  
14 message there from you, dated November 8, from Irv  
15 Nathan. Do you recall --

16 A Is there a question?

17 Q Yeah, there is. There will be. Do you  
18 recall calling Mr. Hubbell on that date?

19 A No.

20 Q Would you have had frequent contact with  
21 Mr. Hubbell with respect to case matters at the  
22 Department?

1 A Not with respect to case matters, but I  
2 would have frequent contact with him on other  
3 matters.

4 Q What other kinds of matters?

5 A Well, for example, we were working on the  
6 policy position of the department with respect to  
7 contacts with representative parties, and he was  
8 involved in that. We had a number of policy  
9 initiatives that he was involved in, including  
10 employment of gays at the investigative agencies of  
11 the department.

12 There were a whole range of issues where we  
13 had interplay between his office and the deputy's  
14 office, including with respect to the crime bill.  
15 The office of legislative affairs reported to  
16 Mr. Hubbell and he was involved in dealing with the  
17 Crime Bill and the position of the department on it  
18 in the Congress, so there were a large number of  
19 issues that our offices had in common and were  
20 working on.

21 Q So while he was not directly responsible  
22 for supervision of the criminal division, he did work

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1 on criminal issues as well as other kinds of issues  
2 in the department?

3 A Well, he did not work on criminal cases  
4 that were pending in the criminal division, to the  
5 best of my knowledge. There were criminal components  
6 within the units that reported to him. For example,  
7 the environmental section had a criminal unit and the  
8 environmental section reported to him, and there was  
9 in fact at about this time, as now I recollect, an  
10 issue with respect to the advisability of staff  
11 attorneys testifying in Congress on the issue that  
12 had been raised by then-Chairman Dingell, and  
13 Mr. Hubbell was in charge of the unit that was  
14 reviewing that policy and reviewing the situation in  
15 the criminal section of the environmental division,  
16 and I was the representative from the deputy's office  
17 dealing with that issue and so we had a number of  
18 meetings and discussions relating to that.

19 So there were some overlap and some matters  
20 but I don't recall his being involved in any criminal  
21 case that was pending in the criminal division.

22 Q Now, other than Mr. McDowell and Ms. Casey,



1 did anyone else brief you on criminal referral C0004,  
2 do you recall?

3 A I don't know what referral you're referring  
4 to, but --

5 Q I'm sorry, the one that I showed you  
6 earlier.

7 A I told you I hadn't seen that before. I  
8 didn't know what the substance was of the matter that  
9 had been referred to the prior U.S. Attorney in  
10 Little Rock that he had raised the recusal issue on.  
11 I didn't deal with the substance of that referral.

12 Q Just the existence of it?

13 A I learned about the existence and the  
14 disposition, which I understood had occurred several  
15 months before I arrived at the department.

16 Q Was Doug Frazier working in your office at  
17 the time that you came to the Department of Justice  
18 or was he someplace else at that point?

19 A He was not in the deputy's office when I  
20 arrived. I believe he was working in a U.S.  
21 Attorney's Office in Florida by that time.

22 Q If you just give me one moment, I think I'm

1 almost done.

2 (Pause.)

3 Do you recall in November of 1993 that  
4 Mr. McDowell had requested a videotape of  
5 Mr. Hubbell's testimony before the Dingell Committee?

6 A No.

7 Q Aside from the specific date, do you have  
8 any recollection of Mr. McDowell requesting such a  
9 thing from you?

10 A No.

11 Q The Dingell Committee was the Committee  
12 reviewing the policy on environmental -- criminal  
13 issues, environmental matters and attorneys  
14 testifying before that Committee; is that correct?

15 A Well, the Dingell Committee was reviewing  
16 policy in the department relating to the  
17 authorization for initiating criminal prosecutions in  
18 environmental matters. His inquiry and subpoena to  
19 line attorneys led to the department reviewing its  
20 policy with respect to its policy regarding providing  
21 line attorneys to testify at Congress and that was an  
22 issue in which I was involved and Mr. McDowell had an

1 interest.

2 Q Do you or anyone in your office have any  
3 contacts with any present or former employee of the  
4 White House relating to criminal referral C0004, and  
5 that's the RTC referral that the department received  
6 in September of 1992?

7 A Well, that's a compound question. I can  
8 tell you I had no contact with anybody at the White  
9 House related to the referral.

10 Q Do you know if anyone in your office or the  
11 department had any contact with --

12 A I'm not aware of anyone.

13 Q Did you or anyone from your office have any  
14 contacts with any individuals who are listed as  
15 witnesses or targets in that referral? And I can  
16 give you a moment to review it if you would like.  
17 The persons named as targets would be Susan McDougal,  
18 James McDougal, Lisa Anspaugh.

19 A All I can tell you is I had no  
20 conversations with any of those people. What people  
21 in the U.S. Attorney's Office or in the fraud section  
22 did in terms of conducting their investigation, I

1 have no idea.

2 Q When you say "those people," would that  
3 include people listed as potential witnesses, et al.,  
4 and those would be people listed on third to the last  
5 page of Bates 000510?

6 A Well, when I said "those people," I was  
7 answering your question to the people you had  
8 referenced.

9 Q I listed the people listed as targets. I  
10 did not go through the list of names of people who  
11 were listed as witnesses.

12 A Where is the list of witnesses? Under item  
13 10?

14 Q I believe that's the case. Yes.  
15 (Witness reviewed the document.)

16 A I had no conversations with any of these  
17 people relating to anything, having anything to do  
18 with referrals or RTC or Madison or any similar  
19 topic, and I have no idea of conversations with any  
20 other people.

21 MR. IVEY: I suppose the record should  
22 reflect that the witness was given a copy of the

1 referral referenced.

2 MR. GICALE: I was about to do that. And  
3 the witness was just referring to Bates number 000510  
4 through 531 and specifically he was referring to item  
5 10 on page 18 of that exhibit.

6 BY MR. GICALE:

7 Q Do you have any knowledge of any improper  
8 handling within the Department of Justice of any  
9 criminal referral relating to Madison Guaranty  
10 Savings & Loan or the Clintons or Mr. Hale?

11 A Absolutely not.

12 MR. GICALE: I have nothing further.

13 EXAMINATION

14 BY MR. IVEY:

15 Q Good afternoon, Mr. Nathan.

16 A Hello, Mr. Ivey. How are you?

17 Q I'll be better in a few minutes. I bet you  
18 will, too.

19 A I'm looking forward to concluding.

20 Q I only have a few questions. I wanted to  
21 ask you about the conversations you had with  
22 Mr. Heymann before you came to give your deposition

1 today. I understand that was prior to the time that  
2 you received a request to come testify before this  
3 Committee.

4 A Yeah, it was probably in March or April of  
5 this year, something like that.

6 Q And the two of you got together to refresh  
7 your recollections of relevant events with respect to  
8 this investigation?

9 A It was by telephone, and my recollection is  
10 Mr. Heymann called me, indicated that someone,  
11 perhaps it was the FBI or someone else, was  
12 interested in this subject; he didn't have a firm  
13 recollection of it and asked me what my recollection  
14 of it was, and I gave him my recollection, which is  
15 very much what I have testified to today, and he said  
16 that comported with his recollection and that was the  
17 end of the discussion.

18 Q Now, in your experience as a lawyer at the  
19 Department of Justice and in private practice, is it  
20 typical for witnesses to get together to try to  
21 refresh their recollections with respect to a matter  
22 that may be the subject of some type of litigation?

1 A Well, it does happen, and it's perfectly  
2 appropriate.

3 Q I wanted to ask you some questions about  
4 the SBA matter. First of all, do you recall  
5 approximately when or roughly when you learned about  
6 this transfer of documents from the SBA to the White  
7 House counsel's office?

8 A No, but I would put it in the  
9 November/December time frame in '93, but I'm not  
10 certain.

11 Q Did you ever come across any evidence or  
12 information that led you to feel that the documents  
13 that the White House had received from the SBA were  
14 not returned to the SBA?

15 A I had the impression that they were  
16 returned.

17 Q Did you ever come across any evidence that  
18 might have led you to feel that there was an improper  
19 motive in the White House's request for the  
20 documents?

21 A No. Mr. Eggleston's explanation was  
22 reasonable and sensible and I accepted it fully and

1 had no reason to doubt it.

2 Q And with respect to Mr. Hubbell's recusal,  
3 you had a conversation prior to the time he produced  
4 a written recusal dated November 3, 1993?

5 A Yes.

6 Q And the subject of that prior conversation,  
7 would you say it's essentially memorialized in the  
8 recusal that he wrote on November 3, 1993? I'm  
9 sorry, I didn't read that document number, if you  
10 could read it.

11 A Sure, 016848. Well, I would say that my  
12 conversation related to the first paragraph of this  
13 memorandum. I don't recall discussing in the one and  
14 only conversation I had with Mr. Hubbell the recusal  
15 of his office on this matter.

16 Q So, in fact, he went beyond where you had  
17 suggested?

18 A Yes, he went beyond what I had suggested.

19 Q To the best of your knowledge, did  
20 Mr. Hubbell do anything to violate his recusal?

21 A I have no knowledge that he did, and no  
22 reason to believe it.

1 Q Let me ask you a few questions about  
2 Ms. Casey's recusal. You were present at the  
3 November 3 meeting at which Mr. Heymann discussed  
4 recusal with Ms. Casey?

5 A Correct.

6 Q Now, during that meeting, Ms. Casey  
7 discussed some of her concerns about recusal?

8 A Yes.

9 Q You mentioned that you thought that -- or  
10 you had the sense that recusal -- she felt recusal  
11 might reflect badly on her in some way, and I wanted  
12 to flesh that out. What did you mean by that?

13 A I had the impression that Ms. Casey was not  
14 extremely sophisticated in these kinds of matters and  
15 from her comments, I thought that she believed that  
16 if she were recused, it would suggest that she had  
17 done something improper in the matter, which of  
18 course was not the case and no one had suggested  
19 that, and that -- or that the department believed  
20 that she could not do a dispassionate analysis of the  
21 facts, which also was not the case. And I think  
22 there was some explanation provided to her that this

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1 was not personal as to her, this was a question of  
2 the appearance issue, and given the relationships  
3 that existed principally with the Tuckers, that  
4 prudence suggested that recusal was in order.

5 Q So in other words, she may have been under  
6 the impression initially that some part of the  
7 recusal consideration focused on the competence of  
8 either her or her office to have handled the matter?

9 A I had that impression.

10 Q And to the best of your knowledge, that was  
11 not the consideration that was driving?

12 A That was not the issue.

13 Q Now, I take it she was also relatively new  
14 to the U.S. Attorney position at that point?

15 A She was very new to that position, and I  
16 had the impression that she was new to litigation as  
17 well. I think that her principal occupation previous  
18 to that had been the academic environment, and I  
19 don't think that she had a lot of experience with  
20 some litigation issues, including recusal.

21 Q Did you know if she had very little  
22 background in criminal litigation at that point?



1 A That was certainly my impression.

2 Q Did she express any concerns about the  
3 impact on her office of having to recuse in this  
4 case?

5 A Yeah, I think she did, that, as I  
6 described, that she was of the belief that assistants  
7 in her office who were very competent, hard working,  
8 diligent people, had worked very hard on the case  
9 against Judge Hale, they were prepared to try that  
10 case and to deal with it effectively and also to deal  
11 effectively with any subsequent proffers that might  
12 be received by Judge Hale's counsel.

13 And again, I had the impression that she  
14 was fighting to retain the matter for them and for  
15 their professional satisfaction and accomplishments  
16 and did not want any aspersions cast on those people  
17 by the recusal of her office.

18 Q One could imagine that these assistants who  
19 were working for her would have been toiling away on  
20 developing this case for an extended period of time,  
21 might be upset by having the case taken away from  
22 them just at the time, or at or about the time of

1 indictment?

2 A Precisely.

3 Q I wanted to ask you a few questions about  
4 your relationship with Mr. Gerth. Now, let me ask  
5 you because I don't recall, actually, what your  
6 testimony was. Did Mr. Gerth contact you with the  
7 information about Mr. Hale's allegations at about  
8 mid-September of 1993?

9 A I was minding my own business in my office  
10 on a Saturday afternoon in September, trying to  
11 familiarize myself with the matters there. Mr. Gerth  
12 called me out of the blue and I believe he was in  
13 Little Rock at the time and told me about his  
14 conversations with Mr. Coleman, the counsel for Judge  
15 Hale, and this was the very first time that I  
16 recollect hearing anything about any of these  
17 matters.

18 Q Now, I believe you testified you spoke to  
19 Mr. Gerth about three times during this entire period  
20 with respect to this matter?

21 A That's my best approximation. I don't  
22 recall each conversation. There were a number of

1 conversations with him.

2 Q Okay. Now, did Mr. Gerth ever tell you if  
3 he spoke directly to Mr. Hale?

4 A I had the impression that he did at one  
5 point tell me that he had spoken directly with  
6 Mr. Hale, perhaps for several hours. He may have  
7 suggested that he had actually even seen an affidavit  
8 of Judge Hale so I think he had direct communications  
9 with Judge Hale at some point.

10 Q And do you recall, during this series of  
11 calls, at what point you got the sense that Mr. Gerth  
12 had spoken directly with Mr. Hale?

13 A I don't recall whether it was in the first  
14 conversation or in the subsequent conversation.

15 Q Now, at some point you told --

16 A His principal conversation with me was  
17 focused on the complaints that Mr. Coleman had  
18 regarding the either ability or the willingness of  
19 the U.S. Attorney's Office to deal with Mr. Coleman.  
20 That was the focus of the conversation.

21 Q Let's talk about that a little bit. You've  
22 testified that you learned that Mr. Coleman and

1 Mr. Hale were in negotiations with the U.S.  
2 Attorney's office in Little Rock with respect to the  
3 proffer?

4 A Correct.

5 Q Were you aware of -- what was on the table  
6 in those negotiations?

7 A I had seen an exchange of correspondence at  
8 some point in the not-too-distant future after the --  
9 my first conversation with Mr. Gerth, and I was aware  
10 from that exchange and I think from communications  
11 with Mr. Gerth that -- I guess I had the impression  
12 that Mr. Coleman was saying that he wanted immunity  
13 for his client or at most, a misdemeanor plea, and  
14 that the U.S. Attorney's Office was saying they  
15 insisted on a plea to a felony and then they would be  
16 prepared to discuss his cooperation and assistance as  
17 it related to his sentence.

18 Q In other words, Mr. Coleman was seeking  
19 either immunity or misdemeanor plea prior to giving  
20 the proffer?

21 A That's my understanding.

22 Q In your view, would that have been

1 appropriate?

2 A I thought that what the U.S. Attorney's  
3 Office was doing, as I understood it, was quite  
4 appropriate, that there was no sense in buying a pig  
5 in the poke, that if you wanted to make a proffer up  
6 front, they could then deal with it. And in any  
7 event, as I understood the facts, the SBA allegations  
8 against Judge Hale were unrelated to this proffer and  
9 the U.S. Attorney's Office believed it had a very  
10 strong case against Judge Hale on that issue and I  
11 thought they were well within their rights to be  
12 insisting on a felony plea to that matter.

13 Q Let me go back to the Gerth matter  
14 briefly. Now, at some point, you told Mr. Keeney and  
15 I believe you also said Mr. McDowell that Mr. Gerth  
16 was the source of your information?

17 A Correct.

18 Q And if you could explain again, and I know  
19 you explained previously but I was just wondering if  
20 you could give a little detail as to why you thought  
21 that you needed to do that. What was it that made  
22 you feel you needed to disclose the source at that

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1 point?

2 A Well, when I first agreed to the  
3 confidentiality with Mr. Gerth, and he had asked for  
4 it, I saw no harm in agreeing to it and I would take  
5 the information from him, whatever he had to proffer,  
6 and I made it clear that I was going to communicate  
7 the information, the substance, to others in the  
8 Department of Justice, but if for whatever reason he  
9 didn't want his name associated with it, I would  
10 accommodate that request.

11 However, a few days later when I either,  
12 learned either directly from Mr. Keeney or from the  
13 memorandum that Mr. Keeney prepared that Gerth had  
14 talked directly and without confidentiality or  
15 anonymity to the FBI and that when Mr. Keeney had  
16 juxtaposed these two items, one is Mr. Gerth's  
17 comments -- attributable comments to the FBI, and  
18 then my discussions with some confidential source, I  
19 was concerned that it might make -- give the  
20 appearance that there were two different sources for  
21 this information instead of fact that they both came  
22 from Mr. Gerth.

1           So when I saw that, I told Mr. Gerth that I  
2 could no longer abide by that agreement, and he  
3 agreed that that could possibly be misleading and  
4 authorized me to disclose that he was the source. So  
5 I told that to Mr. Keeney and I believe to  
6 Mr. McDowell, and of course they were then free to  
7 tell the FBI that that information that was reflected  
8 in Keeney's memo to a Department of Justice official  
9 had come from Gerth.

10           So with both lines that come from the same  
11 sources, that is, Gerth from Coleman.

12       Q   And the concern about the appearance from  
13 two different sources was that, and you tell me if  
14 this is correct or not, was that it would have lent  
15 added credibility?

16       A   Exactly. Suggested there were two  
17 independent sources for the same information, giving  
18 added credibility to the allegation.

19       Q   And you felt that you needed to disclose  
20 this to Mr. Keeney and McDowell so that they had an  
21 accurate read of the situation?

22       A   Correct.

1       Q   In your communications with Mr. Gerth, were  
2 you ever attempting to communicate with Mr. Coleman  
3 and Mr. Hale?

4       A   No, but I did express to Mr. Gerth my  
5 confusion about why a sophisticated defense lawyer  
6 would go to the press with the subject rather than  
7 exhaust remedies within the Department of Justice and  
8 that if he was not happy with the way he was being  
9 treated in the U.S. Attorney's Office or had a  
10 serious question about their ability, competence or  
11 position to deal with it, that there were avenues  
12 within the department and I specifically noted to  
13 Mr. Gerth that Mr. Keeney was the acting head of the  
14 criminal division and that it was within his  
15 responsibilities to deal with such matters and that  
16 if Mr. Coleman wasn't happy with the way things were  
17 being handled in the U.S. Attorney's Office, he had  
18 recourse to Mr. Keeney and to the criminal division.

19       Q   Would it be fair to say that typically  
20 going to the press with this type of information  
21 would undermine the value of the information?

22       A   That's what struck me, I didn't understand

1 the strategy Mr. Hale was following, but I never had  
2 any conversation with Mr. Coleman.

3 Q And when you told Mr. Coleman --

4 A I didn't talk to Mr. Coleman.

5 Q I'm sorry, when you told Mr. Gerth that  
6 they could always relay their concerns to the  
7 Department of Justice, were you providing any unusual  
8 channel for Mr. Coleman or is this something that --

9 A No. Absolutely, this is well recognized by  
10 any sophisticated practitioner in the field.

11 Q In fact, is it fair to say that this  
12 frequently occurs?

13 A It is.

14 Q Defense attorneys may have difficulties in  
15 negotiating with U.S. Attorneys and turn to main  
16 Justice?

17 A Absolutely.

18 Q Now, at the time that you were speaking  
19 with Mr. Gerth, did you ever become aware that  
20 Mr. Hale had refused to provide a proffer to the U.S.  
21 Attorney and the FBI?

22 A That was my impression at some point in the

1 series of communications with Mr. Gerth, and it could  
2 well have been in the first one, that he was not  
3 willing, that is, Coleman was not willing, to make  
4 the proffer to the U.S. Attorney's Office until after  
5 he had been promised immunity on the SBA loan  
6 situation.

7 Q Now, in your conversations with Mr. Gerth,  
8 did you ever provide him any information that was in  
9 any way confidential with respect to any ongoing  
10 investigation in this matter?

11 A No.

12 MR. IVEY: I have nothing further.

13 MR. GICALE: I have nothing further.

14 (Whereupon, at 4:29 p.m., the deposition  
15 was concluded.)

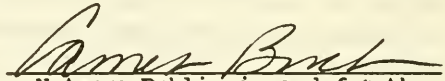
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires MARCH 14, 1998





**DEPOSITION OF KENNETH R. SCHMALZBACH  
IN RE: S. RES. 120**

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**VOLUME II**

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**FRIDAY, OCTOBER 27, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING, AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of KENNETH R. SCHMALZBACH, called for further examination pursuant to agreement by counsel, at 10:00 a.m. in Room 640-A of the Hart Senate Office Building, before PATRICIA A. ZUBER, a Notary Public within and for the District of Columbia, when were present:

MICHAEL P. O'CALLAGHAN, Esq.  
Majority Associate Special Counsel  
JAMES S. PORTNOY, Esq.  
Minority Associate Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

BARBARA C. STERGIS, Esq.  
BRADLEY A. BUCKLES, Esq.  
Office of the General Counsel  
Department of the Treasury  
1500 Pennsylvania Avenue, NW  
Washington DC 20220  
On behalf of the Deponent.

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## WITNESS

## EXAMINATION

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by Mr. O'Callaghan ..... 443



## 1 PROCEEDINGS

2 Whereupon,

3 KENNETH R. SCHMALZBACH

4 resumed the stand and, having been previously duly  
5 sworn, was examined and testified further as follows:

6 EXAMINATION (Continued)

7 BY MR. PORTNOY:

8 Q Good morning, Mr. Schmalzbach.

9 A Good morning, Mr. Portnoy.

10 Q Welcome back.

11 A Yes.

12 Q Did your position at the Treasury bring you  
13 into contact with the White House during the period  
14 between June and August of 1994?

15 A Yes.

16 Q And specifically with the White House  
17 counsel's office?

18 A Yes.

19 Q Did you ever speak to Mr. Cutler during  
20 that period?21 A I'm not sure whether it was before or after  
22 the beginning of June that I met Mr. Cutler. I met

1 him once briefly. I think it was just once. It  
2 might have been even twice. I never had any  
3 conversation with him. I'd say hi.

4 Q So you never discussed with Mr. Cutler the  
5 IG's investigation, for example?

6 A No.

7 Q Or the provision of documents to the White  
8 House by the Treasury Department?

9 A No.

10 Q Did you speak with Jane Sherburne?

11 A Yes.

12 Q On a fairly routine basis?

13 A Yeah.

14 Q As a general matter, what was the purpose  
15 of your discussions with Ms. Sherburne?

16 A Just updating each other on the status of  
17 everything that was going on, particularly what was  
18 going on up on the Hill.

19 Q With respect to the investigation of the  
20 Treasury-White House contacts?

21 A With respect to the upcoming hearings into  
22 the Treasury-White House contacts regarding Madison

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1 Guaranty.

2 Q So the bulk of your communications  
3 concerned Congressional investigations?

4 A That's probably true that the majority of  
5 it concerned, you know, the document productions that  
6 we were doing to the Hill, the conditions under which  
7 those were happening, yes.

8 Q Is that perhaps putting too fine a point on  
9 it, that your discussions might have involved the  
10 whole rubric of issues arising out of your respective  
11 roles concerning the investigations?

12 A I'm sure that that's true, although the  
13 sort of the primary focus of what was happening was  
14 the hearings that were going to be happening at the  
15 end of July and the beginning of August, and  
16 everything else sort of revolved around that.

17 Q Would you describe your interaction with  
18 the people conducting the Inspector General's  
19 investigation as an outgrowth of your role in dealing  
20 with the Congressional investigations?

21 A I did not have very much interaction with  
22 the people conducting the Inspector General

1 investigation. In fact, probably the last discussion  
2 related to the investigation I had was a meeting on  
3 June 28th at which Bob Cesca, Francine Kerner and Jim  
4 Cottos were present, and I, were present. And at  
5 that point it was, everything was still very much up  
6 in the air as to how the Inspector General's  
7 investigation would proceed, how the Senate and House  
8 hearings would proceed, and we were basically trying  
9 to figure that out.

10 Q When you speak of the investigation, do you  
11 mean the actual interviewing of witnesses and the  
12 process of asking questions, or do you mean the  
13 entire process by which the Inspector General  
14 functioned? And let me be more specific. I believe  
15 you had a number of conversations with Ms. Kerner  
16 during the period of July --

17 A Okay, but Francine was not conducting the  
18 investigation.

19 Q That's the distinction I'm asking you to  
20 clarify.

21 A Yes.

22 Q So in your mind, Ms. Kerner was not

1 conducting the investigation?

2 A No, she was advising the investigators.

3 Q Did you consider that distinction important  
4 in any way?

5 A Not at the time. I just didn't have any  
6 occasion to have contact with the investigators.

7 Q In your prior testimony, you indicated that  
8 you spoke with Ms. Sherburne on the 12th of July and  
9 that she indicated that she might have shown some  
10 Treasury documents to the lawyer for one of the White  
11 House witnesses?

12 A A Treasury document.

13 Q A Treasury document.

14 A Actually, it's a debatable proposition as  
15 to whether it was a Treasury document. I don't  
16 believe, I'm not sure that we ended up treating that  
17 as a Treasury document or an RTC document. It was an  
18 internal RTC public affairs newsletter or a page of  
19 it, but yes, that was my testimony.

20 Q Do you know which lawyer she might have  
21 shown that document to?

22 A No, I do not. In fact what she told me at

1 the time was that she didn't remember which lawyer it  
2 was.

3 Q Did she tell you why she had shown the  
4 document to the lawyer?

5 A Not that I recall.

6 Q Did you have an understanding whether  
7 Treasury documents were provided to the White House  
8 pursuant to any conditions or limitations on their  
9 use?

10 A Documents or transcripts?

11 Q I'm still speaking about documents.

12 A Okay. I believe that there were  
13 limitations, but actually whatever limitations there  
14 were would have been reflected in the request for  
15 those documents from Joel Klein, I believe it's dated  
16 May 12th.

17 Q Did you have any concern at the time that  
18 Ms. Sherburne's use of the documents was in any way  
19 inconsistent with the White House's discussions with  
20 Treasury?

21 MS. STERGIS: Objection. I think the  
22 testimony was a document.

1 BY MR. PORTNOY:

2 Q I beg your pardon. The use of the document  
3 was in any way inconsistent?

4 MR. O'CALLAGHAN: I'm sorry. Inconsistent  
5 with what, discussions?

6 MR. PORTNOY: With any conditions that may  
7 have been applicable to the provision of documents to  
8 the White House.

9 THE WITNESS: I don't recall having such a  
10 concern at the time.

11 BY MR. PORTNOY:

12 Q Do you have any reason now to have such  
13 a --

14 A I haven't thought about it since then and  
15 since I don't remember exactly what the conditions  
16 were, or I really don't remember the May 12th letter  
17 well enough.

18 Q You spoke with Ms. Sherburne again on the  
19 15th --

20 A Actually -- wait a minute. That May 12th  
21 letter resulted in the White House getting, being  
22 able to see but not have copies of those documents.

1 The White House did not get copies of documents, as I  
2 recall, until after we had produced them to the  
3 Senate. And I don't know -- I don't remember at all  
4 what, if any, limitations were imposed with respect  
5 to those documents when copies were given to the  
6 White House and that was sometime around the  
7 beginning of July. I believe the first Senate  
8 production was on July 1st.

9 Q I believe you testified that you may have  
10 spoken with Ms. Sherburne again on the 15th of July.  
11 I'd like to show you a document Bates stamped 11435  
12 which I believe you've previously identified as your  
13 notes. The document that I've just given you is  
14 highlighted, which was actually done to bring out the  
15 copying, better resolution, make it a little more  
16 visible. The whole text is highlighted so there's no  
17 specific section that's been singled out.

18 Do you recall whether this document  
19 reflects an actual conversation with Ms. Sherburne,  
20 or potential conversation with Ms. Sherburne?

21 A I do not recall whether it reflects an  
22 actual or potential.

1 Q It could have been either?

2 A It could have been either. The one thing  
3 that suggests that some portion of the conversation  
4 actually happened is the check mark to the left of  
5 the word "proffers." My usual practice, I don't want  
6 to say it's consistent, but my usual practice is when  
7 I have written out things that I want to cover in a  
8 telephone conversation and do actually cover them, I  
9 put a check mark. And sometimes I forget to, but  
10 that's the usual reason for a check mark, that that  
11 was covered.

12 Q And the statement in your notes is  
13 "proffers as to White House witnesses"?

14 A Yeah.

15 Q Do you understand this --

16 A Actually it's not a statement, it's a  
17 question.

18 Q I apologize. There's a question mark at  
19 the end of it.

20 A Right.

21 Q Would you take this to mean that you had a  
22 discussion with Ms. Sherburne regarding the provision



1 to you of materials in some fashion collected or  
2 developed by the White House?

3 A Yes. Yeah, what it suggests to me is that  
4 I wanted to ask Jane whether the White House  
5 counsel's office could give the Treasury lawyers  
6 proffers as to what the White House witnesses'  
7 testimony was. They were interviewing the White  
8 House witnesses.

9 Q And the information you were seeking was  
10 developed, to the best of your recollection in  
11 witnesses that the -- excuse me, in the interviews  
12 that the White House conducted?

13 A Right. That's what it says. White House  
14 witnesses. I would not -- if White House counsel  
15 were not conducting the interviews, there would be no  
16 point in asking the White House counsel to provide  
17 proffers as to what was said in those interviews.

18 Q Do you recall whether Ms. Sherburne offered  
19 to make the information available to you?

20 A No. Actually I don't -- I don't know  
21 whether -- if this was a telephone conversation, I  
22 don't recall whether she did or didn't. I don't

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1 think we ever got those proffers for whatever  
2 reason. I just don't recall ever getting them, and I  
3 do recall the proffers we got from counsel for the  
4 Treasury witnesses.

5 Q Does this notation reflect to you any  
6 discussion of the White House receiving information  
7 from the Treasury?

8 A Assuming that the conversation happened the  
9 way I had charted it out, it suggests that I wanted  
10 to ask them whether -- I wanted to ask White House  
11 counsel whether they wanted copies of the transcripts  
12 of the Inspector General's interviews.

13 Q So the way you read your notes is that that  
14 would have been a subject you intended to raise --

15 A Right.

16 Q -- with them?

17 A Right.

18 Q Not a subject that the White House raised  
19 with you?

20 A Right.

21 Q Does the note say something to the effect  
22 that "T," or Treasury, "transcripts should have

1 Monday night"?

2 A Right.

3 Q And I believe that Monday night would have  
4 been the 18th --

5 A Right.

6 Q -- of July?

7 A Correct.

8 Q Does this suggest to you whether you had  
9 the transcripts at the time you had this  
10 conversation?

11 A I did not. I mean what the note suggests  
12 to me is that I was looking forward to getting them.  
13 I did not have them yet.

14 Q And that you anticipated getting them on  
15 Monday the 18th of July?

16 A Right.

17 Q Do you recall how you knew that the  
18 transcripts might become available on the 18th of  
19 July?

20 A I have no recollection of how I knew that  
21 at all.

22 Q Do you have any recollection whether you

1 actually discussed with Ms. Sherburne the subject of  
2 the IG transcripts?

3 A No.

4 Q I believe you testified earlier that the  
5 presence of a check mark indicates that you discussed  
6 a subject and that the absence of a check mark might  
7 indicate the contrary?

8 A The absence of a check mark is no  
9 information at all. The line of text in the notes  
10 may or may not have been discussed. I wish that I  
11 was as consistent in my practices that I could infer  
12 something from the absence of a check mark, but it  
13 doesn't mean anything.

14 Q In the interim between this conversation  
15 and the 23rd of July, do you recall any conversation  
16 with Ms. Sherburne on the subject of providing  
17 Treasury IG depositions to the White House?

18 A No.

19 Q Thank you, sir. Going back to a document  
20 Bates stamped 16018, which I believe you've also  
21 identified as your handwritten notes?

22 A Right.

1 Q There's a notation that says "transcripts  
2 returned"?

3 A Uh-huh.

4 Q You testified earlier that this notation  
5 was a reminder to yourself to tell Ms. Kerner that  
6 you had returned certain transcripts to her?

7 A Right.

8 Q Do you recall which transcripts you had?

9 A I'm certain that I had Jean Hanson's  
10 transcript. I think I may have had the transcript of  
11 someone named Dudine, D-u-d-i-n-e, and I have  
12 absolutely no idea what the others were.

13 Q You indicated that there were between four  
14 and six transcripts, I believe?

15 A That's a guess.

16 Q So you have no firm recollection one way or  
17 the other?

18 A No.

19 Q Thinking back on it, do you have any  
20 recollection as to how you actually received the  
21 transcripts?

22 A No -- well, the physical act of receiving

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1 them, no. I'm certain that in some way they came  
2 from Ms. Kerner.

3 Q Do you recall whether they came all at once  
4 or one at a time?

5 A No.

6 Q Do you have any recollection of asking for  
7 the transcripts?

8 A Well, I'm sure -- yes. We wanted the  
9 transcripts. We had no way of getting the  
10 information that the Secretary needed to discharge  
11 his responsibilities and the transcripts was one way  
12 of getting them. So we were asking all the time. I  
13 mean we had asked back in June. We discussed the  
14 possibility of getting them back in June, or I don't  
15 know, maybe even back in May. I don't know, but --

16 Q Let me be more specific, sir. You've  
17 testified that, as a general matter, everyone you  
18 spoke to knew that you wanted the transcripts in  
19 order to prepare Secretary Bentsen, or in order to  
20 conduct your duties?

21 A Right.

22 Q What I'm trying to discern is whether you

1 have any recollection that the conveyance of these  
2 transcripts to you was in response to a specific  
3 request or whether it was just your general  
4 understanding that Ms. Kerner knew you wanted them?

5 A I really don't remember at all.

6 Q Other than your general recollection that  
7 you wanted the transcripts to prepare Secretary  
8 Bentsen for his testimony and to perform your duties  
9 with respect to the Congressional inquiry --

10 A Well, I really -- the Secretary has a  
11 responsibility for managing the Department of the  
12 Treasury. If something has been -- if there has been  
13 some misconduct or some errors in judgment by people  
14 who work for him, he has a responsibility to know  
15 about that and to take appropriate action to address  
16 it. That was his first responsibility.

17 His second responsibility, which we  
18 anticipated, I don't think it was certain but we  
19 anticipated, was that he would have to talk about  
20 what he had done in fulfilling those  
21 responsibilities. So, yes.

22 Q You anticipated my next question which was

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1 if you had any other reasons for seeking the  
2 transcripts.

3 A Sorry.

4 Q Do you recall whether you made any use of  
5 the transcripts?

6 A I do not believe -- now, let's be careful.

7 Q During the period prior to July 13th.

8 A I believe that I may have looked at Jean  
9 Hanson's transcript. I certainly did not read it. I  
10 don't remember why I would have looked at it, but I  
11 have a recollection that I looked at, you know, two  
12 or three pages of it, or maybe a passage on two or  
13 three pages. I'm certain that I didn't communicate  
14 any information in it to anybody, and I don't  
15 remember why I even looked at it.

16 Q Did you show the transcripts to anybody?

17 A No.

18 Q Did you discuss them with anyone except  
19 Ms. Kerner?

20 A I'm not even sure -- I don't believe I  
21 discussed them with Ms. Kerner, and I did not discuss  
22 them with anyone else.

1 Q Did you tell anyone that you had them?

2 MS. STERGIS: Objection. This whole line  
3 of inquiry was raised, asked, and answered in the  
4 last deposition, this precise question.

5 MR. PORTNOY: I'm just trying to firm it  
6 up.

7 THE WITNESS: I'm sorry, would you repeat  
8 the question.

9 BY MR. PORTNOY:

10 Q Did you tell anyone that you had the  
11 transcripts?

12 A No.

13 Q Do you have any reason to believe that  
14 Ms. Kerner told anyone that you had the transcripts?

15 A I would have no way of knowing. I don't  
16 have any reason to believe that, but I don't have any  
17 reason to disbelieve it. I simply have no  
18 information at all.

19 Q Do you have any reason to believe that  
20 anyone in the Office of General Counsel, other than  
21 Ms. Kerner and you, had transcripts in their  
22 possession at this time?

1 A No.

2 Q So as far as you know, no one but you and  
3 Ms. Kerner even knew that you had the transcripts?

4 A Again, I have no information about who else  
5 might have known about it.

6 Q Just as far as you know.

7 A As far as I know.

8 Q You indicated just a few moments ago that  
9 when you spoke to Ms. Sherburne on the 15th of July  
10 you didn't have the transcripts?

11 A That's -- A, that is correct; and B, that's  
12 certainly what the note that we discussed, my note,  
13 suggests.

14 Q And that would be consistent with your  
15 recollection that you returned them on the 13th?

16 A Right.

17 Q Do you recall when you next saw a copy of  
18 the deposition transcripts?

19 A Do I recall, no -- well, I have seen  
20 documents that suggest to me that we had them again  
21 on the 18th, but I don't have any independent  
22 recollection of seeing them again.



1 MR. O'CALLAGHAN: Can we go off the record  
2 a second.

3 MR. PORTNOY: Sure.

4 (Discussion off the record.)

5 BY MR. PORTNOY:

6 Q You have no independent recollection of  
7 when you next received the transcripts?

8 A No.

9 Q But you've seen documents, you said, that  
10 indicate to you that it might have been sometime on  
11 July 18th?

12 A Yes.

13 Q Do you recall any limits being placed on  
14 your use of the transcripts when you received them  
15 next?

16 A Yeah. I understood that they were for our  
17 use in helping the Secretary to fulfill his  
18 responsibilities.

19 Q And you've just indicated that those  
20 responsibilities included management of the  
21 department, personnel decisions, and also potentially  
22 advising Congress as to events that had occurred

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1 involving Treasury personnel?

2 A Yes.

3 Q The purposes we've just discussed are  
4 essentially reasons to use the transcripts. Do you  
5 recall any reasons or any limitations -- do you  
6 recall anybody telling you there were ways that you  
7 could not use the transcripts?

8 A Do I specifically recall that, no.

9 Q Do you have any general recollection?

10 A No. I don't recall any conversation that I  
11 was involved in in which someone told me of a  
12 restriction on using the transcripts. There are --  
13 the fact -- well, no.

14 Q No one asked you to keep them confidential,  
15 for example?

16 A I don't know whether anyone asked me to do  
17 that or not. I don't know whether I was the  
18 individual who received the transcripts.

19 Q Do you recall whether you made any use of  
20 the transcripts?

21 A Whether I personally made any --

22 Q Yes, you personally.

1 A No, I did not.

2 Q Do you recall whether you showed them to  
3 anybody?

4 A Did --

5 Q Whether you showed them to anybody.

6 A No.

7 Q You didn't, for example, give them to any  
8 Treasury officials who might be testifying --

9 MS. STERGIS: Objection. This whole line  
10 of inquiry about how the transcripts were handled  
11 once provided to his office on July 18th was  
12 extensively gone through in the deposition last time.

13 MR. PORTNOY: Your objection is noted.

14 BY MR. PORTNOY:

15 Q You didn't show them to anybody, did you,  
16 sir?

17 A I did not.

18 Q You didn't give them to anybody's lawyer?

19 A No, I did not.

20 MR. O'CALLAGHAN: Mr. Portnoy, I'd also  
21 like to go on the record and say also we want to be  
22 careful not to duplicate the record. I'd also like

1 to voice my opinion on that as well right now too.

2 MR. PORTNOY: Just for the record, it's  
3 been a week since the last time we spoke, and two  
4 things happen in a week. One, recollections fade a  
5 little; and another, recollections sometimes  
6 sharpen. And it is conceivable that a week after our  
7 last discussion, Mr. Schmalzbach's recollection is  
8 different and I'd just like the record to reflect  
9 these questions are not intended to duplicate a  
10 record that was created before.

11 MS. STERGIS: And I disagree with the  
12 notion that a deponent who has already been deposed  
13 for 10 hours on direct should be taken through the  
14 same line of questioning, whether a day after or a  
15 week after, because he's under oath and because he's  
16 already been asked the questions multiple times.

17 MR. O'CALLAGHAN: I agree with  
18 Ms. Stergis. Saying there's a week gone by that you  
19 can go through the entire record again, I think it's  
20 stretching matters a little bit. And for the  
21 record -- well, I'm not going to -- that's all I have  
22 to say.

1 BY MR. PORTNOY:

2 Q Mr. Schmalzbach, I'd like you to look at a  
3 document Bates numbered 25190 which is a June 27th  
4 memorandum from Mr. Cesca to Ms. Hanson.

5 (Witness reviewed the document.)

6 I believe Mr. Chertoff questioned you at  
7 some length with this memorandum.

8 A Actually, I think he showed me a different  
9 copy of it. He showed me one that had a confidential  
10 stamp up here.

11 Q Other than the absence of the confidential  
12 stamp, does this appear to be the same memorandum?

13 A Yeah, I haven't done a word-by-word scan,  
14 but it looks like the same one.

15 Q It's a signed copy --

16 A Let me finish reading.

17 (Witness reviewed the document.)

18 Q As a matter of background, you didn't draft  
19 this memorandum, sir, did you?

20 A I did not draft this memorandum, no.

21 Q Did you see it in draft form?

22 A Yes.

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1 Q Do you recall having any discussions with  
2 anyone as to what restrictions it should  
3 appropriately contain regarding Ms. Kerner's role?

4 A No.

5 Q Did you provide comments?

6 A Yes.

7 Q Do you recall what the nature of your  
8 comments were?

9 A There's a document that shows what my  
10 comments were that, I think I was shown here last  
11 time around. I'm sorry. A week ago today.

12 Q You don't recall having any substantive  
13 disagreement about the conditions in this do you?

14 MS. STERGIS: Could we have a document to  
15 refresh his recollection.

16 THE WITNESS: Actually to answer that  
17 question, I don't need the document to refresh my  
18 recollection.

19 No, I had no discussion about the substance  
20 of this. I was informed that -- I think Dennis  
21 Foreman told me that Francine had approached him  
22 about it, and that he had asked her to show it to

1 me. I saw it. I had no disagreement with the  
2 substance of the agreements.

3 MR. PORTNOY: Let's go off the record.

4 (Discussion off the record.)

5 BY MR. PORTNOY:

6 Q Back on the record. Mr. Schmalzbach, you  
7 saw this document before it was in final form; is  
8 that correct?

9 A Yes.

10 Q Are you comfortable, sir, that the terms  
11 and conditions laid out in this document regarding  
12 Ms. Kerner's provision of legal advice and services  
13 to the Office of Inspector General are adequate to  
14 ensure her independent functioning in connection with  
15 the investigation into Treasury-White House contacts?

16 A Yes.

17 Q I would ask you to look at the second  
18 paragraph of the memorandum. I believe the first  
19 sentence reads "given the nature of the inquiry, we  
20 have therefore agreed that Ms. Kerner and members of  
21 her staff will report solely to the Inspector General  
22 on any matters relating to the investigation."

1 Would you give me, please, your  
2 understanding of that sentence?

3 A That Ms. Kerner was to take her direction  
4 defining what she was to do from the Inspector  
5 General and not from Jean Hanson.

6 Q With respect to the word "report," does  
7 that word have a particular technical meaning in this  
8 context?

9 A I'm not sure I understand the question.

10 Q Let me ask it differently. Mr. Chertoff, I  
11 believe, suggested that the word "report" might mean  
12 speak or convey information, and you indicated that  
13 you viewed "report" as being an institutional process  
14 suggesting the professional hierarchy.

15 Do you recall that conversation, sir?

16 A Yes.

17 Q Could you explain then what you understood  
18 the word "report" to mean?

19 A I just did.

20 Q I take it then, sir, you did not interpret  
21 "report" to mean that Ms. Kerner could speak only to  
22 the Inspector General on matters relating to the

1 investigation?

2 A I think the next sentence of that second  
3 paragraph addresses that issue.

4 Q Would you explain the way in which you  
5 believe that to be the case?

6 A Yes. There was a specific restriction to  
7 which the Office of General Counsel, and Mr. Cesca  
8 agreed or at least this document reflects that he  
9 agreed -- I don't know how the agreement actually  
10 happened -- that she would not communicate any  
11 information about the substance of the inquiry  
12 without authorization from Mr. Cesca or from someone  
13 in the Inspector General's office.

14 Q Would it be a fair reading of this  
15 document, sir, to say that the first sentence which  
16 says that Ms. Kerner will report solely to the  
17 Inspector General on matters relating to the  
18 investigation is essentially an organizational --  
19 refers essentially to an organizational context or an  
20 institutional context?

21 A I understand it to refer to an  
22 organizational arrangement.

1 Q And that the second sentence which states  
2 that "neither Ms. Kerner nor her staff will  
3 communicate any information about the substance of  
4 this inquiry" is a far more specific provision with  
5 respect to actually communicating with people other  
6 than the Inspector General? That was a poorly  
7 phrased question.

8 And that the second sentence governs  
9 Ms. Kerner's conveyance of information that she  
10 learns in connection with the investigation?

11 A I understand the first sentence to deal  
12 with organizational arrangements and the second  
13 sentence to deal with the communication of  
14 information about the substance of the inquiry.

15 Q In your view, sir, would it be information  
16 about the substance of the inquiry for Ms. Kerner to  
17 convey to you information about what witnesses might  
18 be deposed in the immediate future?

19 A Ms. Kerner, from time to time, told me when  
20 a witness was scheduled to be deposed. I did not  
21 consider that information about the substance of the  
22 inquiry.



1 Q Did Ms. Kerner ever convey to you any  
2 information that you considered to pertain to the  
3 substance of the inquiry?

4 A Not that I recall.

5 Q To the best of your knowledge, Ms. Kerner  
6 complied with the limitations of this memorandum?

7 A Yes.

8 (Witness conferred with counsel.)

9 THE WITNESS: In response to the last  
10 question, it's been pointed out to me that we have  
11 previously discussed the communication to my office  
12 of the transcripts of the interviews. As regards the  
13 question as to whether or not that was consistent  
14 with the terms of this June 27th memorandum, it is my  
15 understanding that that communication was authorized  
16 by the Inspector General, and therefore, it was  
17 consistent with this memorandum.

18 BY MR. PORTNOY:

19 Q Did you consider yourself in some fashion a  
20 designee of the Secretary in receiving information  
21 from Ms. Kerner?

22 A I don't know what that means.

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1 Q It was your responsibility, I believe you  
2 testified, to assist the Secretary in responding to  
3 the results of the Inspector General's investigation?

4 A Yes.

5 Q Is it your understanding that you received  
6 the deposition transcripts in conformity with that  
7 responsibility?

8 A Yes.

9 Q And as a consequence of that  
10 responsibility?

11 A That was why we wanted them, to fulfill  
12 that responsibility.

13 Q Would it be fair to say that you received  
14 them in some sense on behalf of the Secretary?

15 A I would not use that term.

16 Q Is there another term you like better?

17 MS. STERGIS: Objection to the question.

18 BY MR. PORTNOY:

19 Q Sir, I would show you a document Bates  
20 stamped 15988 through 90.

21 (Witness reviewed the document.)

22 MS. STERGIS: Just a moment, please. Okay.

1 BY MR. PORTNOY:

2 Q I believe you were shown that document  
3 during the direct examination?

4 A I think that's right.

5 Q And you testified that it was a "to do"  
6 list prepared on July 9th but possibly updated  
7 sometime thereafter?

8 A Right.

9 Q I believe you indicated in your earlier  
10 testimony, sir, that you knew by the 9th of July that  
11 the Inspector General did not want witnesses to know  
12 what other witnesses were going to say?

13 MS. STERGIS: Is this a question as to what  
14 he testified to last time?

15 MR. PORTNOY: It's foundational. If you'd  
16 like, Counsel, I can go back into the transcript and  
17 read it.

18 THE WITNESS: Actually I'd like that.

19 MS. STERGIS: Yes.

20 MR. PORTNOY: Let's go off the record while  
21 I find it.

22 (Discussion off the record.)

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1 BY MR. PORTNOY:

2 Q The question was asked: "Was it your  
3 understanding, at least at this time, July 9th, that  
4 the Inspector General specifically did not want to  
5 have any Treasury witnesses knowing what another  
6 Treasury witness would say."

7 Answer: "It appears to have been, yeah."

8 A Right. That was my answer.

9 MS. STERGIS: For the record, before we  
10 proceed further, I'd like to note that counsel was  
11 reading from a typed transcript of the deposition of  
12 last week which apparently is available to minority  
13 and majority counsel, but which has not been made  
14 available to Treasury counsel, although this witness  
15 is being asked at length to testify again to matters  
16 about which he testified last week.

17 BY MR. PORTNOY:

18 Q Do you know how you came to the  
19 understanding that the Inspector General's office did  
20 not want Treasury witnesses to know what other  
21 Treasury witnesses were going to testify to?

22 A No.

1 Q Do you recall discussing that subject with  
2 anyone?

3 A I expect that I did have conversations  
4 about it. I do not recall any of them.

5 Q Do you recall whether you thought that was  
6 appropriate?

7 A I actually was not at all certain that it  
8 was appropriate.

9 Q Why did you think it might not be  
10 appropriate?

11 A Because these were people that were being  
12 asked about things they had done in performing their  
13 official responsibilities, and I find the proposition  
14 that they cannot discuss it with one another and  
15 attempt to try and remember what happened offensive  
16 and artificial.

17 Q Do you have an understanding of why the  
18 Inspector General didn't want Treasury witnesses to  
19 know what other witnesses were likely to testify to  
20 or had testified to?

21 MS. STERGIS: Objection; calls for  
22 speculation. He's testified he recalls no

1 conversations.

2 MR. PORTNOY: I believe I asked him if he  
3 had an understanding.

4 THE WITNESS: Do I have an understanding of  
5 that now?

6 BY MR. PORTNOY:

7 Q First, did you at the time?

8 A Probably.

9 Q Do you recall what that understanding was?

10 A They were -- first of all, I don't recall  
11 it very well. To the extent that I do, it probably  
12 had to do with a concern that they had that if one  
13 witness knew what another witness was saying, it  
14 might -- if witness A knew what witness B had said it  
15 might change what witness A would say.

16 Q Did you view that as a legitimate concern?

17 A After a criminal investigation had been  
18 conducted and after there -- and in the midst of what  
19 was being done as an administrative inquiry, not  
20 altogether, no. I didn't think the witnesses would  
21 do that. I didn't think they'd have any interest in  
22 doing it.

1 They had also already testified before a  
2 grand jury and changing their testimony at that stage  
3 of the game entailed great peril unless they had a  
4 good reason, such as refreshed recollection.

5 Q So it was your view that witnesses had a  
6 substantial disincentive to modify their testimony?

7 A Yes, that's exactly right.

8 Q Would it be fair to say that you thought  
9 there were adequate safeguards in place that  
10 witnesses would not alter their testimony?

11 A I thought that the fact that they had  
12 previously testified to a grand jury was a pretty  
13 strong safeguard.

14 Q Do you recall whether anyone ever  
15 specifically asked you not to indicate to Treasury  
16 witnesses what another witness's testimony would be  
17 or had been?

18 A I have no specific recollection of someone  
19 saying that to me. I do recall that it was my  
20 understanding that that was something that I should  
21 not do.

22 Q To the best of your knowledge, did you ever

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1 suggest or indicate to a Treasury witness what  
2 another witness had testified to or might testify to?

3 A No.

4 MR. O'CALLAGHAN: Off the record for a  
5 second.

6 (Discussion off the record.)

7 BY MR. PORTNOY:

8 Q In your view, it would have been  
9 appropriate to provide transcripts of prior testimony  
10 to future witnesses, would it have not?

11 MS. STERGIS: Objection; asked and  
12 answered. The witness has already testified to his  
13 view on this subject and that misstates his previous  
14 testimony.

15 MR. PORTNOY: The witness is free to  
16 disagree.

17 BY MR. PORTNOY:

18 Q Is it your view that it would have been  
19 appropriate to share transcripts of depositions with  
20 witnesses who had not yet testified?

21 A Absent an objection from the Inspector  
22 General, yes.

1 Q And if the Inspector General had objected,  
2 would that have changed your view?

3 A That it was appropriate? No, it would not  
4 have changed my view. It simply would have governed  
5 my conduct.

6 Q And I believe you testified that it did  
7 govern your conduct?

8 A Yes, I testified that it did govern my  
9 conduct.

10 Q Mr. Chertoff showed you a document earlier  
11 with a notation and a reference to the phrase "the  
12 Secretary's review team." Was there any formal  
13 review team set up by the Secretary to review the  
14 Inspector General's report or the OGE report?

15 A Formal review team? I mean was there a  
16 Treasury order that came out and said there's -- no.

17 There were -- it was contemplated that  
18 there would be a group of Treasury staff that would  
19 review the IG report and the OGE report. It was also  
20 contemplated that there would be a different group,  
21 and it might have been just Treasury high level  
22 officials, it might have been outsiders who would

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1 come in and advise the Secretary as to what actions  
2 were appropriate in light of what the Inspector  
3 General had found and the Office of Government Ethics  
4 had advised. In the event there was no group of high  
5 level executives that came in to do that, there was a  
6 group, my office, that was to review the Inspector  
7 General report and the report of the advice of the  
8 Office of Government Ethics and advise the Secretary  
9 regarding our views on both.

10 Q Had you ever heard the phrase "Secretary's  
11 review team" before this deposition?

12 A I saw it in a document. I think review  
13 group or something along those lines. I'm not sure  
14 that's the exact phrase I saw.

15 Q Other than the document that you were shown  
16 during this deposition and the questions you were  
17 asked during this deposition, had you ever heard the  
18 phrase "Secretary's review team" before?

19 A In a document that I have seen, not during  
20 this deposition.

21 Q You saw a phrase that was substantially  
22 similar?



1 A Yeah. By the way, "the Secretary's review  
2 group" is a term that is used in all kinds of  
3 contexts. This administration has had people come in  
4 to look at all kinds of things that happen in the  
5 department that have nothing to do with this, so I  
6 want to be careful that that's not some term of art.  
7 "Secretary's review group" is almost an MO.

8 Q Mr. Schmalzbach, you testified that, at  
9 some point in the course of this investigation,  
10 Mr. Knight and Mr. McNamara became aware that you had  
11 copies of deposition transcripts?

12 A Right.

13 Q Was that after July 18th, to your  
14 recollection?

15 A Certainly.

16 MS. STERGIS: I'd like to go off the record  
17 a minute. I need a minute break.

18 (Recess.)

19 BY MR. PORTNOY:

20 Q You testified, sir, that access to the  
21 depositions was restricted, and I believe that's a  
22 quote, to people who were involved in prepping

1 Secretary Bentsen. What did you mean by  
2 "restricted"?

3 A No one else got them.

4 Q No one else got them, meaning no one else  
5 had copies, or meaning that they were stored in a way  
6 to preclude access?

7 A No one else was permitted to see them.

8 Q I'd like to show the witness a document,  
9 Bates stamp 6877, which is a July 23rd, 1994 letter  
10 from Stephen McHale to Jane Sherburne.

11 (Witness reviewed the document.)

12 A Yes.

13 Q You saw this letter in draft form; is that  
14 correct, sir?

15 A Yes.

16 Q You indicated that that was on the 23rd of  
17 July, the date the letter was actually sent?

18 A I believe that's right.

19 Q You don't have any recollection of seeing a  
20 draft of the letter prior to the 23rd of July, do  
21 you, sir?

22 A No.

1 Q Do you recall what time of day?

2 A No.

3 Q Can you exclude any times of day, by which  
4 I mean it was, the 23rd of July was a Saturday. Do  
5 you recall whether your practice was to come to the  
6 office during regular business hours on Saturday?

7 A I was in my office from sometime around  
8 June 21st or 22nd, somewhere in there, to August 5th  
9 every day as a regular workday and a regular workday  
10 typically went from 8:00 in the morning till 10:00,  
11 11:00, midnight.

12 Q So it could have been any time during those  
13 hours?

14 A Yes.

15 Q Would you characterize the letter as  
16 imposing conditions on the use of the deposition  
17 transcripts?

18 A Yes.

19 Q And one of those conditions is the quote,  
20 "these transcripts are being provided to you solely  
21 to assist you in the preparation for Mr. Cutler's  
22 testimony before the House and Senate Banking

1 Committees" -- "Banking Committee hearings"?

2 A Right.

3 Q What's your understanding of that  
4 condition, sir?

5 A My understanding of that condition was that  
6 Mr. Cutler was going -- had been asked -- and I  
7 believe it was by Mack McLarty back in March -- to  
8 conduct an investigation of what had happened, and  
9 that he would be asked to testify regarding his  
10 findings.

11 Q The next sentence states "you have agreed  
12 that the transcripts we are providing to you with  
13 this letter will not be disclosed publicly or shown  
14 to individuals (other than Mr. Cutler) who may be  
15 called as witnesses by either committee until such  
16 time as we advise you that this restriction is no  
17 longer necessary."

18 A Right.

19 Q What did you understand that restriction to  
20 mean?

21 A That he wouldn't disclose the transcripts  
22 publicly, and he would not show the transcripts to

1 witnesses.

2 Q In your understanding is not be disclosed  
3 publicly or shown to individuals coextensive with not  
4 discussed with witnesses?

5 A Discussed --

6 MS. STERGIS: Excuse me. Objection to the  
7 term "coextensive." What does that mean?

8 MR. PORTNOY: The same.

9 THE WITNESS: I'm sorry, could you repeat  
10 the question.

11 BY MR. PORTNOY:

12 Q I will ask it slightly different. The  
13 letter states that the transcripts will not be  
14 disclosed publicly or shown to individuals other than  
15 Mr. Cutler. Did you understand that to mean that the  
16 transcripts could not be discussed with individuals  
17 other than Mr. Cutler?

18 A I don't believe I focused on that issue at  
19 the time.

20 MR. O'CALLAGHAN: Jim, just for clarity,  
21 you are talking about the transcripts as objects or  
22 the substance of them?

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1 MR. PORTNOY: The substance.

2 THE WITNESS: Again, I don't recall.  
3 focusing on that at the time.

4 BY MR. PORTNOY:

5 Q Was it your understanding that Mr. Cutler's  
6 testimony would be based in part on his investigation  
7 or --

8 A It was my understanding that Mr. Cutler's  
9 testimony would be almost entirely based on his  
10 testimony, leaving aside conclusions he might draw  
11 regarding the facts that he had found.

12 Q You mean based on his investigation?

13 A Yeah.

14 Q Would it have been appropriate then to use  
15 the transcripts in conducting Mr. Cutler's  
16 investigation?

17 A Yes.

18 Q Would it have been appropriate for  
19 Mr. Cutler or someone on his staff to use information  
20 contained in the transcripts to try and clarify or  
21 refresh the recollection of a witness who was  
22 interviewed during the course of Mr. Cutler's

1 investigation?

2 A How use it to clarify?

3 Q Suppose Mr. Cutler or one of his staff  
4 counsel had asked a witness -- had stated to a  
5 witness that they had indications that events might  
6 not have transpired as that witness had testified and  
7 asked the witness whether they stood by their  
8 testimony.

9 A I wouldn't have considered that -- I would  
10 consider that consistent with the restriction that  
11 had been imposed.

12 MR. O'CALLAGHAN: Jim, I'm sorry. What  
13 type of witness are you talking about? Is this  
14 someone that testified before, someone who is about  
15 to testify, both, a witness for what?

16 MR. PORTNOY: I am referring to individuals  
17 interviewed during the course of the White House  
18 investigation.

19 BY MR. PORTNOY:

20 Q So if an individual was interviewed during  
21 the course of Mr. Cutler's investigation and provided  
22 a recollection which was in conflict with a

1 recollection that was stated in one of the  
2 transcripts, it would be appropriate for either  
3 Mr. Cutler or his staff to speak to the White House  
4 employee about that potential conflict?

5 MS. STERGIS: Objection; vague. What does  
6 providing a recollection --

7 BY MR. PORTNOY:

8 Q If a White House witness recalled a meeting  
9 occurring, for example, and one of the witnesses  
10 whose deposition was provided to Mr. Cutler did not  
11 recall such a meeting occurring, would it be  
12 appropriate for Mr. Cutler to discuss this  
13 discrepancy in recollection with the White House  
14 witness?

15 A I think it would depend on how the  
16 discussion proceeded.

17 Q But it would not necessarily be violative  
18 of this letter as you understand it?

19 A That's correct.

20 Q As you understand this letter, is there any  
21 limitation on Mr. Cutler or his staff discussing the  
22 events discussed in a deposition transcript?

1 MR. O'CALLAGHAN: I'm sorry, Mr. Portnoy.

2 MR. PORTNOY: With a White House witness.

3 MR. O'CALLAGHAN: In relation to the events

4 as they're described in the transcript or just in the  
5 abstract?

6 BY MR. PORTNOY:

7 Q First, in the abstract. This doesn't, in  
8 your view, limit the subjects that Mr. Cutler can  
9 discuss with White House personnel, does it?

10 A No.

11 Q Even if Mr. Cutler's knowledge of those  
12 subjects is derived in part from the deposition  
13 transcripts?

14 A Correct.

15 Q What if his knowledge is derived entirely  
16 from the deposition transcripts?

17 A Presumably he's learning as he goes along  
18 interviewing witnesses -- well, I'm sorry. You're  
19 going to need to restate that question for me because  
20 I'm not sure what I'm answering anymore.

21 Q Does this letter agreement in any way  
22 restrict Mr. Cutler from discussing a subject with a

1 White House employee when Mr. Cutler's knowledge of  
2 that subject is derived entirely from one of the  
3 deposition transcripts that were provided to the  
4 White House?

5 A In any way, possibly.

6 Q What might be the limitation?

7 A I'm not sure that it would be appropriate  
8 under this to read witness A's transcript to witness  
9 B.

10 Q That would be tantamount to showing the  
11 transcript, wouldn't it?

12 A It would seem to be to be tantamount to  
13 showing the transcript. People might differ on that  
14 point, but to me, it would be the same as showing it  
15 to them.

16 Q Mr. Schmalzbach, are you aware of any  
17 evidence that Mr. Cutler or anyone in the White House  
18 counsel's office violated the terms of this  
19 agreement?

20 A No.

21 Q Do you have any reason to believe that  
22 anyone in the White House counsel's office or



1 Mr. Cutler violated the terms of this agreement?

2 A No.

3 Q To your knowledge, sir, did anybody at the  
4 Treasury object to providing the deposition  
5 transcripts to Mr. Cutler?

6 A I am certain that no one felt that there  
7 was any legal prohibition against providing the  
8 transcripts. I have actually -- as to whether people  
9 thought it was a good idea or not, I'm not sure what  
10 Francine Kerner's view was.

11 Q Ms. Kerner might have thought that it was  
12 ill advised?

13 A I'm not sure what Francine Kerner's view  
14 was.

15 Q Did you participate in discussions as to  
16 whether there was any legal impediment to the release  
17 of these transcripts?

18 A I may very well have, but I don't remember.

19 Q I've handed the witness a document Bates  
20 stamp number 11124 which appears to be an E-mail from  
21 Mr. Schmalzbach to Mr. Knight on the 28th of July,  
22 1994 at 10:44 a.m.

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1 Have you seen this document before, sir?

2 A Yes.

3 Q Did you prepare this E-mail?

4 A Yes.

5 Q Do you know whether Mr. Knight ever  
6 received it?

7 A I'm not sure I do know that he ever  
8 received it.

9 Q Do you have any reason to believe he might  
10 not have received it?

11 A Yeah. I don't know -- we have two E-mail  
12 systems and I don't know which one this came out of,  
13 and I know he hates one of them and I'm not sure he  
14 ever turns it on. I don't know whether this came out  
15 of the LAN system or the EIS system.

16 Q So it's possible that you sent Mr. Knight  
17 an E-mail on the system he doesn't use?

18 A I don't remember when we first -- actually  
19 I think this is on the LAN system. I honestly -- I  
20 think we went onto the LAN system. My office, or at  
21 least I, went onto the LAN system sometime around  
22 January of 1994, and I probably used the LAN system

1 to communicate with him. I just don't remember what  
2 printouts from the two systems look like. In any  
3 case, if it's EIS, I would have some reason to  
4 believe that Ed might not have seen it, but if it's  
5 the LAN system, Ed is pretty good about reading his  
6 LAN messages.

7 Q There is one system he uses and one he  
8 tends to avoid?

9 A Actually more than he tends to avoid, he  
10 actively hates and it was Ed, 2-1/2 years ago, who  
11 led to bringing the new system into the building.

12 Q Did you ever discuss with Mr. Knight the  
13 substance of this E-mail?

14 A I suspect I probably did talk to him about  
15 whether or not to call Adair.

16 Q Do you have any specific recollection of  
17 speaking with him?

18 A No, but I have a vague recollection that I  
19 ended up telling him that he didn't need to call  
20 Adair. But it's just a vague recollection.

21 (Discussion off the record.)

22 THE WITNESS: I misspoke a moment ago. It

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1 would have -- this conversation that I am recalling  
2 would have been that to tell him, me to tell him that  
3 he did not need to call Mr. Ryan, not that he did not  
4 need to call Mr. Adair. Mr. Adair we already, the  
5 E-mail itself tells me he doesn't need to call Adair.

6 BY MR. PORTNOY:

7 Q To your knowledge, did Mr. Knight ever call  
8 Mr. Ryan?

9 A No.

10 Q Did it concern you in any way that  
11 Ms. Kerner called you in the middle of a meeting  
12 among the staff of Inspector Generals to tell you  
13 what was going on in the meeting?

14 A Actually I'm not sure that what she told me  
15 was what was going on in the meeting. So I guess  
16 I'll need you to ask a more specific question in  
17 order to answer it.

18 Q Did the circumstances under which  
19 Ms. Kerner called you and that is reflected in this  
20 E-mail, give you any cause for concern?

21 A No.

22 Q Did you consider whether this phone call

1 was consistent with Ms. Kerner's obligations under  
2 the June 27th memorandum?

3 A I don't remember what I thought at the  
4 time. As I look at it now, it seems entirely  
5 consistent.

6 Q Did Ms. Kerner tell you that anyone had  
7 asked her to call you?

8 A I have no recollection of that at all.

9 Q Did Ms. Kerner suggest that Mr. Knight  
10 should call Mr. Ryan or was that your idea?

11 A I'm not certain.

12 Q You say in the last paragraph of this  
13 E-mail, "I expect to hear from IG counsel how the  
14 meeting with Kulka went about noon. I will call you  
15 and give you revised talking points for the Ryan call  
16 as soon as I hear from IG counsel."

17 Do you recall if Ms. Kerner did call you?

18 A I don't specifically recall a conversation  
19 with Francine. I do have the recollection that I  
20 learned somehow that there was no need -- that there  
21 wasn't going to be a delay so that there was no need  
22 for Ed to call Ryan. Again, I don't specifically

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1 recall Francine calling me and telling me that, I  
2 just can't think of any other way it would have  
3 happened.

4 Q You indicate in the E-mail, sir, that  
5 Ms. Kerner is meeting with the RTC Inspector  
6 General's office to determine final changes to the  
7 Inspector General's chronology?

8 A Right.

9 Q During your call, did Ms. Kerner convey to  
10 you any information with respect to discussions  
11 regarding changes to the chronology?

12 A Not that I recall.

13 Q Were any subjects discussed other than  
14 Ms. Kulka's concerns?

15 A Not that I recall. Actually, Ms. Kulka's  
16 concerns, I guess that's a fair way to characterize  
17 it.

18 Q Ms. Black's statement of Ms. Kulka's  
19 concerns.

20 A Whatever it was, right. No, there was no  
21 other subject that I recall being discussed.

22 Q Did Ms. Kerner ever before call you during

1 a meeting in the Inspector General's office?

2 A I'm not sure that this was a call made  
3 during a meeting that -- who is meeting, I mean, you  
4 know, it could have been a break. I mean I don't  
5 know what the circumstances were. I don't know where  
6 she was when she made the phone call.

7 Q Did Ms. Kerner ever call you during a  
8 meeting with the Inspector General's staff, to your  
9 knowledge --

10 A I don't know.

11 Q -- to report to you what was occurring in a  
12 meeting?

13 A I don't know where Francine was when she  
14 was calling me. I mean that's not the first thing  
15 you normally discuss with someone on the telephone,  
16 where are you.

17 Q Did Ms. Kerner ever call you and say that  
18 she was in a meeting and that she wanted to report to  
19 you events that were occurring during the meeting?

20 A Not that I recall; no, I don't think so.

21 Q Your deputy, Mr. McHale, was one of a group  
22 of lawyers that suggested possible changes in the

1 Inspector General's draft report; is that correct?

2 A Yes, that's my understanding.

3 Q You stated that you were not, I quote,  
4 "consulted with respect to the proposed changes"?

5 A I don't remember being consulted about  
6 them. I don't want to say they were never mentioned  
7 to me, but I wasn't consulted about them. Without  
8 reading the transcripts, it was hard to know whether  
9 they were right or wrong.

10 Q And you hadn't really read the transcripts  
11 at that point?

12 A Nor have I now.

13 Q You haven't become curious?

14 A I don't have time for curiosity.

15 Q I believe you indicated, sir, that  
16 Mr. McHale may have come up with the idea of  
17 providing suggested changes to the report on his own?

18 A I believe that what I said, which still  
19 seems to me to be true, is that I don't know where  
20 the idea came from.

21 Q It could have been Mr. McHale's idea, it  
22 could have been someone else's idea?

1 A Well, since I don't know, it could be  
2 anything.

3 Q Presumably, sir, there's a difference  
4 between being certain that something occurred and  
5 being certain that other things did not occur.

6 A Yes, certainly so.

7 Q I'm not asking you the same question twice,  
8 I was asking you whether there were any, whether you  
9 were prepared at this point to eliminate the  
10 possibility that it was Mr. McHale?

11 A No, I'm not prepared to eliminate the  
12 possibility that it was Mr. McHale's idea.

13 Q To your knowledge, no one directed you to  
14 put together a group of lawyers to review these  
15 changes, did they, sir?

16 A To my knowledge, no one directed me to do  
17 that.

18 Q And to your knowledge, you never directed  
19 Mr. McHale to do so?

20 A To my knowledge, I did not direct  
21 Mr. McHale.

22 Q Do you have any reason to believe that

1 these suggested revisions were designed to slant the  
2 report in any way?

3 A My understanding of the suggested revisions  
4 was that they were designed to conform the report to  
5 the testimony in the transcripts.

6 Q Would it be fair to say that the intent of  
7 the revisions, as you understand it, was to ensure  
8 that the report accurately reflected what was stated  
9 in the transcripts?

10 A Yes.

11 Q Do you have any reason to believe, sir,  
12 that any official of the Treasury Department altered  
13 his or her testimony in any way as a consequence of  
14 having access to either the depositions of witnesses  
15 that were conducted by the Inspectors General or by  
16 having access to the Inspector General's draft  
17 report?

18 MS. STERGIS: Which testimony at what  
19 time?

20 BY MR. PORTNOY:

21 Q Do you have any reason to believe that the  
22 testimony of any witness before the Congress was



1 altered by virtue of having had access to the  
2 Inspector General's deposition transcripts?

3 A I have no reason to believe that happened.

4 Q Do you have any reason to believe that the  
5 testimony of any Treasury official before the  
6 Congress was altered by having access to the draft  
7 report?

8 MS. STERGIS: Objection. It's not clear  
9 that there are facts in evidence as to when each  
10 Treasury witness may or may not have had access to  
11 the transcripts of others, nor is it clear on the  
12 record when Treasury witnesses had access to the IG  
13 or OGE reports, so the question assumes facts not in  
14 evidence.

15 MR. PORTNOY: I'm just asking  
16 Mr. Schmalzbach if he has any reason to know that  
17 witnesses altered their testimony as a consequence of  
18 having access to the materials that were just  
19 delineated. If he doesn't know --

20 THE WITNESS: Actually you said in one case  
21 the draft report, and I don't recall any witness  
22 having access to the draft report.

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1 BY MR. PORTNOY:

2 Q Which presumably would mean that no  
3 witness's testimony was affected by having access to  
4 the draft report?

5 A It would mean that. I just don't want  
6 to -- I mean I sort of share my counsel's concern. I  
7 don't want to leave an implication on the record that  
8 anyone did by just answering that question without  
9 pointing out that no witness had access to the draft  
10 report.

11 Q Did you have any discussions with anyone at  
12 the Office of Government Ethics regarding the release  
13 of deposition transcripts to either the Treasury  
14 Department or the White House?

15 A Not that I recall. You did say the Office  
16 of Government Ethics?

17 Q Yes.

18 A No, not that I recall.

19 Q You testified before, sir, I believe, that  
20 you don't know whether Mr. Cutler and Secretary  
21 Bentsen ever actually had a conversation that  
22 resulted in the transference of deposition

1 transcripts to the White House; is that correct?

2 A Yes.

3 Q Do you have any understanding as to how  
4 that transference was caused to come about?

5 MS. STERGIS: Objection. That was the  
6 subject of hours of testimony in the last deposition.

7 MR. PORTNOY: Let's go off the record for a  
8 second.

9 (Discussion off the record.)

10 BY MR. PORTNOY:

11 Q Do you have an understanding, sir, who  
12 initiated the discussions on or about July 23rd, 1994  
13 that led to the conveyance of the transcripts to the  
14 White House?

15 A No. I don't recall. I just don't recall.

16 Q Do you have any reason to believe that  
17 Mr. Knight spoke directly with Mr. Cesca on the 23rd  
18 of July?

19 A On the 23rd of July?

20 Q That's correct.

21 A No.

22 Q To conclude, sir, to your knowledge, did

1 anyone in the Office of General Counsel at the  
2 Treasury Department in any way attempt to interfere  
3 with the Inspector General's investigation?

4 A No.

5 Q Did anybody try to direct the results of  
6 that investigation?

7 A I am aware of no one having tried to direct  
8 the results of the investigation.

9 Q Did anyone try to limit the subjects of  
10 inquiry?

11 A I am aware of no one who tried to limit the  
12 subjects of inquiry.

13 Q Are you aware of anything at all that you  
14 consider to have compromised the integrity of the  
15 investigation?

16 A No.

17 Q Are you aware of anything at all considered  
18 to have compromised the integrity of the testimony of  
19 any witness before the Congress?

20 A No.

21 MR. PORTNOY: That's all. Thank you.

22 EXAMINATION

1 BY MR. O'CALLAGHAN:

2 Q Okay, Mr. Schmalzbach. I have a couple of  
3 follow-up questions.

4 A That's what they all say. That's like  
5 clients who say I've got a quick one for you.

6 Q It really won't take very long. I believe  
7 you said earlier today -- Counsel, please correct me  
8 if I'm mischaracterizing what Mr. Schmalzbach said --  
9 that it was no secret that you wanted to get copies  
10 of the transcripts?

11 A Yes.

12 Q Okay. And I think you stated earlier that  
13 you may have even mentioned it as early as May,  
14 having an interest in getting copies of them?

15 A Right.

16 Q Okay. You testified earlier also that you  
17 received the transcripts sometime -- you first  
18 received transcripts between July 8th and July 13th?

19 A Right.

20 Q But you said before the 13th you don't  
21 think you really reviewed the transcripts except you  
22 might have looked at Jean Hanson's transcript and

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1 seen portions that were contained in two or three  
2 pages of it?

3 A Right.

4 Q Could you explain for what purpose you  
5 wanted the transcripts if you weren't using them or  
6 looking at them?

7 A We wanted them -- yes, I have explained why  
8 we wanted them. Can I explain why I didn't look at  
9 them then?

10 Q I think you've also testified you haven't,  
11 even today you still haven't reviewed them in any  
12 extensive manner?

13 A Right. I have not read any of them from  
14 cover to cover, but again I did -- I have this  
15 recollection that I looked at Jean Hanson's. I don't  
16 know whether it was for curiosity.

17 I certainly didn't read it from cover to  
18 cover then nor since then, but I've had very light  
19 encounters with Jean Hanson's transcripts, and only  
20 proximity encounters with the others.

21 Q Okay. But I think you also stated the  
22 transcripts were provided to you to help you to help

1 the Secretary in fulfilling his responsibilities;  
2 right?

3 A That's correct.

4 Q And, provided to your office, Steve McHale  
5 used them?

6 MS. STERGIS: Objection; vague. Are we  
7 talking about provision on July 18?

8 MR. O'CALLAGHAN: At any time. I don't  
9 care.

10 THE WITNESS: The transcripts that -- the  
11 transcripts that I received sometime between the 8th  
12 and the 13th were returned, my recollection is within  
13 a matter of a couple of days. No one else looked at  
14 them.

15 BY MR. O'CALLAGHAN:

16 Q How about the ones after the 18th?

17 A Okay. And the question with respect to the  
18 ones received after the 18th?

19 Q They were used by other people in your  
20 office; is that right?

21 A Right.

22 Q I just wanted to make sure because then

1 earlier you stated today that you didn't show them to  
2 anyone. I just wanted to make sure it was clear --

3 A That was the transcripts that I had  
4 sometime between the 8th and the 13th.

5 Q I just wanted to make that clear, during  
6 that time period, because I don't think it was clear  
7 when you answered the question.

8 A Glad to clarify.

9 Q Okay. Earlier Mr. Portnoy was asking you  
10 about review teams, and what that may or may not be,  
11 and I think you'd said that a review team was  
12 contemplated before and after.

13 And if you could just describe what you  
14 mean by "a review team was contemplated."

15 A One idea that had been suggested for how to  
16 assist the Secretary in dealing with the results of  
17 the IG's investigation and OGE's advice was to  
18 convene a group of senior officials, maybe even  
19 people from outside the department to come in, look  
20 at the information that was available and give him  
21 advice. That was not done.

22 Q Okay. But there was a group of people in

1 the general counsel's office who went through the  
2 draft report and made their own edits and made, put  
3 forward suggestions for the IG's draft report; is  
4 that correct?

5 A That was a separate process.

6 Q Okay. But --

7 A There was a group of attorneys in my office  
8 who read the transcripts, prepared summaries of the  
9 transcripts, and then when we got the draft  
10 chronology, compared the two against each other for  
11 where there were differences.

12 Q Did they run those suggestions or the work  
13 that they had by anyone in your office for review?

14 A I assume they ran them by Steve McHale.

15 Q Anyone else?

16 A No.

17 Q Did Mr. Knight see them?

18 A No, I don't think so.

19 MR. O'CALLAGHAN: I have no further  
20 questions at this time  
21  
22

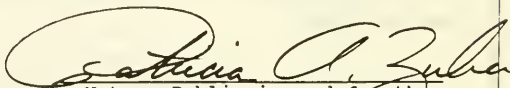
1 MR. PORTNOY: No further questions.  
2 (Whereupon, at 12:15 p.m., the deposition  
3 was concluded.)  
4  
5

6 -----  
7 KENNETH R. SCHMALZBACH  
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CERTIFICATE OF NOTARY PUBLIC & REPORTER

I, PATRICIA A. ZUBER, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires FEBRUARY 14, 2000

**DEPOSITION OF KEVIN B. KENDRICK  
IN RE: S. RES. 120**

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**MONDAY, OCTOBER 30, 1995**

U.S. SENATE,  
COMMITTEE ON BANKING, HOUSING AND URBAN AFFAIRS,  
SPECIAL COMMITTEE TO INVESTIGATE WHITEWATER  
DEVELOPMENT CORPORATION AND RELATED MATTERS,  
*Washington, DC.*

Deposition of KEVIN B. KENDRICK, called for examination pursuant to notice of deposition, at 9:38 a.m. in Room 640-A of the Hart Senate Office Building, before CARMEN BUNCH, a Notary within and for the District of Columbia, when were present:

ALICE S. FISHER, Esq.  
Majority Associate Special Counsel  
LANCE COLE, Esq.  
Minority Deputy Special Counsel  
U.S. Senate  
Committee on Banking, Housing, and Urban Affairs  
534 Dirksen Building  
Washington, DC 20510  
On behalf of the Committee.

CHARLES J. SGRO, Esq.  
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Tenth Street & Constitution Avenue, NW  
Washington, DC 20530  
On behalf of the Deponent.

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## P R O C E E D I N G S

MS. FISHER: Good morning, Mr. Kendrick.

THE WITNESS: Good morning.

MS. FISHER: This deposition is being conducted pursuant to Senate Resolution 120. I don't know if you've had an opportunity to look at the resolution, or if you care to. It establishes a Special Committee administered by the Banking Committee to conduct an investigation involving Whitewater Development Corporation, Madison Guaranty Savings & Loan and related matters. Specifically, section 1(b)(2)(c) of the Senate resolution authorizes an investigation and public hearings into whether the Department of Justice has improperly handled RTC criminal referrals relating to Madison Guaranty Savings & Loan Association or Whitewater Development Corporation, and this will be the focus of today's deposition.

This deposition is in advance of public hearings in November. If you are going to be called to testify, you will be notified prior to that. I'm going to ask you a series of questions and ask that

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you testify under oath. If you don't understand a question, please let me know and I'll rephrase it. And if you need a break at any time, let me know.

The stenographer will prepare a record of questions and answers and the deposition will be treated as committee confidential until the commencement of the hearings. Prior to the hearings, you will receive a letter from the committee telling you that you may come to the Senate and review your transcript and fill out an errata if you care to.

You may be represented by counsel, and I see that Ms. Simonton is here today with you. Objections to the form of questions will be noted for the record and counsel may object on the grounds of privilege or relevance. The committee chairman will rule on any objections.

Whereupon,

KEVIN B. KENDRICK

was called as a witness and, having first been duly sworn, was examined and testified as follows:

## EXAMINATION

BY MS. FISHER:

1 Q Could you state your full name for the  
2 record.

3 A Kevin B. Kendrick, K-e-n-d-r-i-c-k.  
4  
5

6 Q Could you give us your present business  
7 address?

8 A 477 Michigan Avenue, 26th Floor, Detroit,  
9 Michigan 48226.

10 Q And your present position?

11 A Supervisory special agent.

12 Q Could you give me a little bit of your  
13 employment history.

14 A I began with the bureau in 1981, January  
15 19. I was assigned to the Detroit office. I've been  
16 in Kansas City, Detroit, headquarters and back in  
17 Detroit.

18 Q What position did you hold between  
19 September 1992 and November 1993?

20 A Supervisory special agent at FBI  
21 headquarters.

22 Q Could you give me an idea of what your

1 responsibilities were at that time?

2 A As a supervisory special agent, I was  
3 assigned to the financial institution fraud unit,  
4 which was within the white-collar crime section of  
5 the criminal investigative division at headquarters.  
6 Some of my responsibilities included program  
7 oversight for various field offices. And at any  
8 given time during that time period, there were  
9 anywhere from two to four agents in the units, so the  
10 offices were constantly shifting around from agent to  
11 agent.

12 When I say "program oversight," I'm talking  
13 about things related to financial institution fraud  
14 matters. We looked at undercover operations, program  
15 initiatives, utilization of resources, things of that  
16 nature, things of an administrative and investigative  
17 nature.

18 Q Did you have a specific region?

19 A We didn't do things by region. We just had  
20 various field offices assigned to us.

21 Q And what field offices were assigned to you  
22 in that time frame?



1 A I can't recall specifically which ones were  
2 assigned to me. I had anywhere from 15 to 20 field  
3 offices at that time.

4 Q Was Little Rock, Arkansas one of the field  
5 offices that was assigned to you at that time?

6 A Yes. It was assigned to me for most of  
7 that time, although there did come a point in 1993  
8 when Little Rock was reassigned to another agent  
9 within the unit.

10 Q Do you recall about what time that was?

11 A I want to say around the summer of '93. I  
12 believe Little Rock was assigned at that time to  
13 Special Agent Steve Yount.

14 Q How do you spell that?

15 A Y-o-u-n-t.

16 Q Was that a permanent reassignment?

17 A Nothing was permanent in our unit because  
18 we -- you know, with the influx of agents, duties and  
19 responsibilities changed.

20 Q Did there come a time in 1993 that Little  
21 Rock was assigned to you again?

22 A No, not that I recall.

1 Q Was there a particular employee at the  
2 Little Rock office who was your main contact there at  
3 that field office?

4 A Our point of contact at field offices was  
5 generally the supervisor and that's for all field  
6 offices. For Little Rock, my point of contact would  
7 have been Steve Irons.

8 Q How often would you have contact with  
9 Mr. Irons, on a daily basis, a weekly basis or --

10 A Probably -- it would be difficult for me to  
11 characterize. I would say no more than once every  
12 couple of weeks or something like that, very  
13 infrequent contact.

14 Q Was that basically the norm for your  
15 contact with field offices?

16 A Yes. Our emphasis during this time was a  
17 deemphasis on headquarters' control of  
18 investigations. We were cutting back during this  
19 entire time on reporting requirements. This was  
20 something that was being done throughout the FBI. We  
21 were trying to make the field offices more autonomous  
22 and in control of their investigations. This was

1 just a national policy that was being implemented.  
2 So we try not to bother the field offices with  
3 questions.

4 Q Are you aware of the committee's document  
5 request to the FBI and the Department of Justice?  
6 Did you search for any documents, notes or reports  
7 that you may have in your files?

8 A I provided information that I had in my  
9 file to Special Agent Erickson, and I don't know if  
10 that was in response to your request or the  
11 independent counsel's request.

12 Q Did you speak to anyone other than your  
13 counsel prior to your deposition?

14 A No.

15 Q Do you recall, Mr. Kendrick, when you first  
16 learned of an RTC criminal referral relating to  
17 Madison Guaranty Savings & Loan coming up?

18 A It would have been shortly after my arrival  
19 at headquarters, and my first day there would have  
20 been September 23, I believe, 1992. It would have  
21 been during that week, I believe.

22 Q You don't believe that you heard of it

---

10

1 prior to coming to headquarters?

2 A No, absolutely not.

3 Q How did you learn of it?

4 A Through conversation with my unit chief at  
5 the time.

6 Q Who was your unit chief at the time?

7 A Ronald Dick, D-i-c-k.

8 Q And Mr. Dick was at headquarters?

9 A Yeah, that's correct.

10 Q And what did Mr. Dick tell you about the  
11 RTC criminal referral relating to Madison Guaranty?

12 A I believe the conversation was just that  
13 something with the Little Rock office was ongoing. I  
14 don't believe he made any specific mention of the  
15 criminal referral, but just that there was something  
16 going on in Little Rock and to just stay tuned.

17 Q At that time did you discuss it with anyone  
18 else?

19 A Not that I can recall.

20 Q When do you recall you first had contact  
21 with Mr. Irons regarding the RTC criminal referral?

22 A I don't recall the first contact with

1 Steve, but there were a couple of phone calls during  
2 this time period, from the time that I first got  
3 there until the time that we received the referral,  
4 calls basically saying we wanted a copy of the  
5 referral. My superiors wanted a copy of the  
6 referral, but that was basically the substance of our  
7 conversations.

8 Q Who were your superiors that wanted the  
9 copy of the referral?

10 A Well, Ron Dick.

11 Q Anyone else?

12 A Not that I can recall.

13 Q I want to show you a document that I  
14 believe came from your files. It's marked KBK at the  
15 bottom. Would that be your initials, KBK?

16 A There?

17 Q Yes.

18 A No, that looks like SDI to me. Oh, that's  
19 a date stamp. This is dated prior to my arrival at  
20 headquarters.

21 Q Right, it is dated prior to your arrival,  
22 but would this have been a document that came from

---

12

1 your files?

2 A It may have. I had things in my files --

3 Q As background?

4 A Yes, I received some information from Jane  
5 Erickson during 1993 relevant to Madison Guaranty,  
6 things that she provided me. And my file was  
7 strictly information that I may have needed for  
8 whatever. This was not, you know, an official FBI  
9 file.

10 Q Do you recall whether, when you first heard  
11 of the RTC criminal referral relating to Madison in  
12 September or the week of September 23, 1992, was it  
13 at that time that you learned that President Clinton  
14 and Hillary Clinton were mentioned in the referral?

15 A I believe it was during that same time,  
16 yes.

17 Q And was it at that same time that you  
18 learned that Jim Guy Tucker was also mentioned in  
19 that referral?

20 A I really don't recall specifically any  
21 conversation about Jim Guy Tucker.

22 Q Do you recall whether you learned at that

1 time that Whitewater was mentioned in the RTC  
2 criminal referral relating to Madison?

3 A I believe there was some mention of  
4 Whitewater, the Whitewater Development Corporation.  
5 The only thing that I basically recall from those  
6 conversations with Steve was that there was a massive  
7 criminal referral form involving the Clintons as  
8 witnesses and other individuals as potential  
9 subjects.

10 Q Do you recall from the telephone  
11 conversations with Mr. Irons anything else that he  
12 discussed with you when you first arrived?

13 A No, nothing of a substantive nature, no.

14 Q Do you recall whether Mr. Irons talked to  
15 you about the U.S. Attorney's Office in the Eastern  
16 District of Arkansas and any contacts he was having  
17 with him regarding the RTC criminal referral?

18 A No, I don't recall any conversation like  
19 that.

20 Q What is your understanding of who else at  
21 FBI headquarters knew of the RTC criminal referral  
22 relating to Madison at that time?

1 MS. SIMONTON: Can we get a clarification  
2 of the specific time you're talking about? Before  
3 the receipt of the referral itself at headquarters  
4 or --

5 MS. FISHER: That would be great, thank  
6 you. Before the receipt of the actual referral at  
7 headquarters.

8 THE WITNESS: I'm really not sure who all  
9 might have had information about the existence of our  
10 actual receipt. I was just too new to the game.

11 BY MS. FISHER:

12 Q Do you recall having discussions other than  
13 with Mr. Dick?

14 A No.

15 Q I would like to show you a document,  
16 Mr. Kendrick, that is marked FBI 9852996 dated  
17 10/7/92. Do you recall, Mr. Kendrick, receiving this  
18 teletype?

19 A May I have a minute to go over this?

20 Q Absolutely, absolutely.

21 A Thank you.

22 (Witness reviewed the document.)

1 Yes, I recall this.

2 Q On the first page, or the second page, I'm  
3 sorry, after the cover page, and the second line down  
4 it says facsimile transmission from Irons to  
5 Kendrick, October 6, 1992.

6 A Yes.

7 Q Do you recall what that fax may have been?

8 A I believe that would have been the criminal  
9 referral form.

10 Q The actual referral?

11 A Yes.

12 Q Do you recall who at headquarters was  
13 getting a copy of the actual referral at that time?

14 A I think I shared it with my unit chief and  
15 beyond that, I don't know who he might have shared it  
16 with.

17 MR. COLE: Just for the record, was that  
18 Mr. Dick?

19 THE WITNESS: Yes, sir.

20 MR. COLE: Thank you.

21 BY MS. FISHER:

22 Q Do you recall having discussions with

1 Mr. Irons after you received this teletype about this  
2 teletype?

3 A I'm sure that I did, but -- let me see.  
4 After this teletype was received, there was a meeting  
5 between myself and Mr. Kubic and Mr. Verinder with  
6 DOJ personnel; Mr. Mueller and Ira Raphaelson,  
7 special counsel for financial institution fraud at  
8 the time. And I believe that meeting took place on  
9 October 7 or October 8. I'm not really sure of the  
10 date, but subsequent to that meeting, I'm sure that I  
11 did have conversations with Mr. Irons.

12 Q Could you tell me about that meeting, what  
13 was discussed at that meeting?

14 A We had the meeting in order to discuss what  
15 path to take, because I believe Mr. Irons made a  
16 reference in his teletype here on the last page that  
17 the first assistant had advised that he was going to  
18 advise the Department of Justice of this matter due  
19 to its sensitive nature, so pursuant to that, we  
20 decided -- well, we didn't decide.

21 A meeting was held at Mr. Mueller's office,  
22 and during that meeting, Mr. Mueller indicated that



1 he didn't want this particular investigation handled  
2 in any different fashion than we would any other FIF  
3 investigation.

4 Q Do you recall anything else of substance  
5 that was discussed at that meeting?

6 A There was general discussion regarding the  
7 criminal referral, but it was very general. Again, I  
8 don't know if Mr. Verinder saw the criminal  
9 referral. I never discussed it with him. There was  
10 general discussion of the criminal referral.  
11 Mr. Verinder did all the talking for the bureau.

12 Q By the time of that meeting you had read  
13 the criminal referral; is that correct?

14 A That's correct.

15 Q Had you read the exhibits to the criminal  
16 referral?

17 A No. No, as a matter of fact, I never saw  
18 the exhibits.

19 Q Do you know whether Mr. Verinder had read  
20 the referral by the time of that meeting?

21 A I don't know.

22 Q Do you recall anything else that was stated

---

1 by Mr. Mueller or Mr. Raphaelson at that meeting?

2 A I believe Mr. Mueller indicated that --  
3 made a comment to the effect of he didn't have enough  
4 information to really advise as to any course of  
5 prosecutive action, should there be any, but that the  
6 FBI should determine if the case did have  
7 investigative merit and to handle it as we would any  
8 other FIF investigation.

9 Q Did you or others at the FBI discuss a  
10 course of action after that meeting?

11 A A meeting was held, as I recall, between  
12 Mr. Kubic, who was a section chief at the time and  
13 Mr. Verinder. And it was from that meeting that I  
14 received my instructions to do a teletype to Little  
15 Rock instructing them to institute a limited  
16 investigation in order to determine if a full  
17 investigation was warranted.

18 And by "limited investigation," I meant  
19 review of the evidence, of the exhibits, that I  
20 believe up until that time, Little Rock had not been  
21 privy to.

22 Q So based on the reading of the referral, it

1 was decided between Mr. Kubic and Mr. Verinder that a  
2 limited investigation was warranted with regard to  
3 the referral?

4 A That's correct.

5 Q And that limited investigation was going to  
6 include review of the exhibits?

7 A Yes.

8 Q And anything else?

9 A Just a review of the exhibits to find out  
10 if there really was anything to pursue. And this is  
11 a course of action that we would ordinarily take in  
12 any FIF investigation.

13 Q Did you have any conversations with  
14 Mr. Irons prior to this meeting with regard to the  
15 criminal referral and what course of action Little  
16 Rock --

17 A Prior to our receipt of the criminal  
18 referral?

19 Q Yes.

20 A No. I mean, I believe we had conversations  
21 on October -- as indicated in this teletype, we had  
22 conversations on October 6 and 7, but no, no

1 discussion regarding prosecutive courses of action.

2 Q I want to show you a document that's Bates  
3 number FBI 1031. And I want to ask you,  
4 Mr. Kendrick, is this the teletype that you sent at  
5 the direction of Mr. Verinder and Kubic?

6 A This is a rough draft.

7 Q A draft?

8 A Yes, something that I prepared.

9 Q Maybe this is the actual one, I apologize.

10 A Oh, not a problem.

11 MS. SIMONTON: Can we identify that for the  
12 record?

13 MS. FISHER: Yes, FBI 523.

14 THE WITNESS: Yes, this is a copy of the  
15 teletype that was sent out.

16 BY MS. FISHER:

17 Q After sending this teletype to Mr. Irons,  
18 did Mr. Irons call you to discuss it?

19 A You know, I don't specifically recall any  
20 telephone call after this. There may very well have  
21 been but I just don't recall.

22 Q On --

1 MS. SIMONTON: Can I confer with him for  
2 just a minute?

3 MS. FISHER: Absolutely.  
4 (Witness conferred with counsel.)

5 BY MS. FISHER:

6 Q Mr. Kendrick, turning to the third page of  
7 that document which says "administrative  
8 note/tickler," would that have been sent to Mr. Irons  
9 as well?

10 A No.

11 Q Along with this teletype? No?

12 A No.

13 Q This was just for headquarters' purposes?

14 A Standard procedure.

15 Q It was your understanding, then, that you  
16 were directing Mr. Irons to contact you after this  
17 limited investigation with his results?

18 A That's correct.

19 Q Do you recall whether Mr. Irons told you  
20 whether the U.S. Attorney's Office in the Eastern  
21 District of Arkansas was taking any action on the  
22 criminal referral at this time?

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22

1 A We received a teletype from the Little Rock  
2 division, I believe on October 16, and at that time  
3 they advised us that they would be taking a  
4 noninvestigative posture in this matter, based on the  
5 decision of the U.S. Attorney's Office to hold in  
6 abeyance a prosecutive decision concerning this  
7 matter.

8 Q What did you understand a noninvestigative  
9 posture to mean?

10 A The fact that they weren't going to pursue  
11 an investigation because there was no -- that the  
12 U.S. Attorney's Office was not going to pursue it at  
13 this time. The U.S. Attorney's Office did indicate,  
14 as I recall, that there was a possible prosecutive  
15 interest as it related to the McDougals and Lisa  
16 Anspaugh, but that they weren't really inclined to  
17 take any investigative or prosecutive action at that  
18 time primarily because of the existence of two other  
19 substantial criminal matters that had yet to be  
20 referred to the FBI by the RTC.

21 Q What investigative posture was taken by the  
22 FBI at this time?

1 A A noninvestigative posture by FBI Little  
2 Rock.

3 Q Did FBI headquarters play any role in that  
4 decision?

5 A I don't have any information to that  
6 regard. I know that I was not instructed to inform  
7 them to do anything otherwise. We got the teletype  
8 in saying that they were taking a noninvestigative  
9 posture, and that was it.

10 Q It wasn't your understanding that that  
11 meant the file would be closed, was it?

12 A No. No, as a matter of fact, I believe he  
13 specifically indicated that the prosecutive opinion  
14 was being held in abeyance.

15 Q I would like to show you the teletype that  
16 you just referred to, and it's October 16, 1992, FBI  
17 526. Is it your understanding that this teletype was  
18 written after the 300 exhibits to the criminal  
19 referral had been reviewed?

20 A That's my understanding, yes.

21 Q And on the second page of this, at the end  
22 69 of the paragraph, it reads "USA feels the limited

1 data furnished may indicate criminal activity on the  
2 part of the subjects, James and Lisa McDougal and  
3 Lisa Anspaugh. However, USA is holding opinion of  
4 prosecutive opinion regarding these subjects in  
5 abeyance."

6 A That's right.

7 Q That's what you just testified to. Is it  
8 your understanding that the FBI field office in  
9 Little Rock based its decision to take a  
10 noninvestigative posture on the decision of the USA  
11 to hold the prosecutive opinion in abeyance?

12 A I think the decision -- and again this is  
13 just reading into this -- the decision to take a  
14 noninvestigative posture as it related to this case  
15 was that it would be fruitless to do so if the U.S.  
16 Attorney's Office, as indicated here, believed there  
17 was no factual basis to suggest criminal activity on  
18 the part of any of the individuals listed as  
19 witnesses in the referral.

20 And that again, as you've already stated,  
21 the limited criminal activity on the part of the  
22 subjects was such that they felt that this was not

1 something that needed to be pursued, in light of the  
2 existence of the other investigations and in light of  
3 the fact that Mr. McDougal had already been tried and  
4 acquitted on charges stemming from Madison Guaranty.  
5 They also discussed the fact that he had no assets at  
6 the time, was drawing disability income and was  
7 believed to be residing in a trailer owned by a  
8 friend.

9 Q When the FBI decides to take a  
10 noninvestigative posture with regard to a case, what  
11 happens to that file in general?

12 A It depends. It really does depend on the  
13 particular office, depends on the situation.  
14 Sometimes the case may be closed, sometimes the case  
15 may be just put into a pending, inactive status.  
16 That doesn't mean that investigation would  
17 necessarily cease or that we wouldn't even reopen a  
18 case, should the opportunity present itself.

19 Q After this October 16, 1992 teletype, did  
20 you receive any further instructions from anyone at  
21 FBI headquarters, with regard to this RTC criminal  
22 referral relating to Madison, within the next few

1 months, meaning all the way up into '93?

2 A No, the only instruction I received was to  
3 contact the RTC as it related to the other two  
4 referrals that were mentioned in this teletype in  
5 order to determine the status.

6 Q Did you contact the RTC regarding the  
7 status of the other two institutions?

8 A Yes, I did.

9 Q Who was that contact with?

10 A That was with Ken Donahue.

11 Q Could you describe for me the substance of  
12 that conversation with Mr. Donahue?

13 A As I recollect, Mr. Donahue indicated that  
14 he was aware of the existence of RTC investigations  
15 into those cases and he advised that he would have  
16 his investigator, who was Jean Lewis and I believe  
17 she was assigned to Kansas City at that time,  
18 expedite those referrals as soon as possible.

19 Q Was that your only discussion with  
20 Mr. Donahue regarding the status?

21 A No, I believe I had a subsequent  
22 conversation with him after -- I believe we --



1 Mr. Verinder wanted those looked at within a 90- to  
2 120-day period, and I believe I had a subsequent  
3 conversation with Mr. Donahue concerning the  
4 nonreceipt of those criminal referrals after that  
5 120-day period.

6 Q Could you describe the substance of that  
7 conversation with Mr. Donahue?

8 A I think I just wanted to check the status.  
9 That's really my basic recollection.

10 Q In either of those conversations with  
11 Mr. Donahue, did you discuss the RTC criminal  
12 referral relating to Madison?

13 A No, not to my knowledge.

14 Q Is it your understanding that the FBI  
15 investigation regarding Madison had been closed at  
16 that time, or was it still active and pending?

17 A I don't think there was an investigation  
18 ever opened into Madison at that time. There was a  
19 closed file.

20 Q There was a closed file?

21 A Right, but I don't believe that there was  
22 an active investigation ever initiated. They may

1 have reopened the old file.

2 Q When would that have been?

3 A I don't know.

4 Q I want to show you a document,  
5 Mr. Kendrick, that's marked FBI 10035.

6 A Yes.

7 Q Did you create this document?

8 A I don't believe I did. I believe this was  
9 created by one of our analysts in preparation -- this  
10 is something that would typically be prepared for all  
11 subprograms prior to the inspection of an office.  
12 It's used for that purpose.

13 Q Prior to an inspection of --

14 A Yeah. At the time we had analysts within  
15 the units that prepared various types of information  
16 for use by inspector's aides for inspections of  
17 offices. They were instructed to prepare information  
18 on each program area.

19 Q Do you recall about what time this document  
20 was created?

21 A I don't know. I'm not really sure when  
22 Little Rock's inspection was conducted.

1 MS. SIMONTON: Can we go off the record for  
2 a minute?

3 MS. FISHER: Sure.

4 (Discussion off the record.)

5 BY MS. FISHER:

6 Q Mr. Kendrick, could you clarify for me,  
7 earlier you made a statement regarding a closed file  
8 relating to Madison. Could you clarify that for me?

9 A I was referring to the prior investigation  
10 of Madison Guaranty Savings & Loan; I believe that  
11 was a 1985 case.

12 Q Okay. Is it your understanding that the  
13 1992 criminal referral coming out of the RTC relating  
14 to Madison was a closed file after October of '92?

15 A No, all I'm saying is that an active  
16 investigation was not initiated as a result of the  
17 receipt of that particular referral.

18 Q So would it have been a pending file, or  
19 how would that have been treated internally at the  
20 FBI?

21 A Are you talking FBI headquarters or FBI  
22 Little Rock?

---

30

1 Q FBI headquarters.

2 A It would have just gone into a file at  
3 headquarters. We have files in our office, working  
4 files. We have general information files.

5 Q Is there some kind of document that comes  
6 around headquarters every once in a while that lists  
7 the ongoing cases or the open investigations?

8 A Not to my knowledge, no. We don't actually  
9 open investigations at headquarters.

10 Q Do you know how that file would have been  
11 treated in Little Rock after October of '92?

12 A No, I don't.

13 Q Getting back to the document, FBI 1035, if  
14 you can recall an approximate date for when this  
15 document was created.

16 A I really don't know when this was  
17 prepared. Probably at some point during 1993, since  
18 it indicates that headquarters supervisory oversight  
19 of this matter is being handled by the governmental  
20 fraud unit, so I would imagine sometime during the  
21 summer of '93.

22 Q It refers to a Small Business

1 Administration investigation?

2 A Yes.

3 Q Do you recall what investigation that was?

4 A That would have been handled by Jane

5 Erickson, and I assume that would be part of the

6 Mozark investigation.

7 Q What is Mozark investigation refer to?

8 A Mozark was the overall name given to the

9 investigation of David Hale and the SBA.

10 Q What is your understanding of that

11 investigation?

12 A I have very, very limited knowledge of that

13 investigation because it was handled by the

14 governmental fraud unit.

15 Q Why don't you tell me your limited

16 knowledge on the topic.

17 A When I say "limited," I mean limited. I

18 had my own responsibilities within the financial

19 institution fraud unit, and Jane Erickson was

20 handling the Mozark case. The only thing I know

21 about that case is that she traveled there on several

22 occasions, reviewed files while she was there and did

1 whatever she had to do in order to pursue it.

2 Q Okay.

3 MR. SGRO: Off the record.

4 (Discussion off the record.)

5 BY MS. FISHER:

6 Q Back on the record.

7 Do you recall when you first learned of the

8 investigation surrounding David Hale and/or Capital

9 Management Services, Inc.?

10 A Sometime during 1993. I would imagine

11 during the summer, but I don't know specifically

12 when.

13 Q Do you recall learning of the seizure of

14 documents at the offices of Capital Management on

15 July 20, 1993?

16 A I have no information on that.

17 Q Did you discuss it with Steve Irons at any

18 time?

19 A No, because Steve -- again given our

20 breakdown within the white-collar crime section, he

21 wouldn't have discussed that with me.

22 Q Did you have any contact with anyone at the

1 SBA regarding the investigation?

2 A Absolutely not.

3 Q Do you recall any investigation related to  
4 the RTC criminal referral on Madison taking place  
5 between October '92 and summer of '93?

6 A I'm not aware -- is that in reference to  
7 the initial criminal referral?

8 Q Yes.

9 A I'm not aware of any.

10 Q Do you recall when an investigation of  
11 Madison -- strike that.

12 When was it that you learned of issues  
13 relating to Madison again?

14 A I think it was in September of '93, and I  
15 think I generated a couple of E-mails in reference to  
16 questions that came down from our section chief  
17 concerning Madison.

18 Q Do you recall that this may have been one  
19 of those E-mails, dated 8/2/93, FBI 1027?

20 A Yes, this is definitely one of them.

21 Q Who is this a response to?

22 A This was a response to my unit chief, Ron

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1 Dick.

2 Q Do you recall whether this was the first  
3 time you were involved with the Madison investigation  
4 since October of '92?

5 A Well, yes, directly, other than my contacts  
6 with Ken Donahue.

7 Q That we've already discussed?

8 A Yes. And what this E-mail is is basically  
9 a repetition of information that had been provided  
10 earlier. I believe this was in response to a  
11 question, what's going on in the Madison Guaranty  
12 case, so I basically gave -- this is a rehash of  
13 information that had been provided the previous year,  
14 reflecting all of my knowledge.

15 Q Do you recall why Mr. Dick brought up this  
16 subject with you?

17 A I said it was Mr. Dick. I'm not really  
18 sure. I'm just going on our general chain of  
19 command. I don't specifically recall that it was  
20 Mr. Dick. It could have been Mr. Kubic, so I should  
21 clarify that, but again, I don't know what  
22 precipitated the question.

1 Q Do you recall having discussions about it?

2 A No, I don't.

3 Q You have no recollection of what instigated  
4 the questioning?

5 A No. No, I mean I was aware, I believe, in  
6 a general sense at this time of the existence of the  
7 Mozark investigation, but I didn't know what the  
8 nexus was.

9 Q Did there come a time when you learned what  
10 that nexus was?

11 A I believe I did see a copy of the  
12 subsequent criminal referrals that came in concerning  
13 the other corporations, and I'm not sure when that  
14 occurred.

15 Q Well, let me ask you this. What is your  
16 understanding of the nexus between the Madison  
17 Guaranty investigation and the Mozark investigation?

18 A My understanding was that David Hale had  
19 information that was relevant to both cases.

20 Q Anything further?

21 A No.

22 Q Do you recall learning what that

1 information that was relevant to the Madison case  
2 from Mr. Hale was?

3 A I really don't recall. At the time a  
4 decision had been made by our front office that this  
5 matter was going to all be handled by the  
6 governmental fraud unit.

7 Q Did you have any conversations with  
8 Mr. Irons in early September of '93 regarding Madison  
9 Guaranty?

10 A I don't recall specifically any  
11 conversations. I may have, but I just don't recall.

12 Q When do you recall learning that new  
13 referrals relating to Madison Guaranty were expected  
14 from the RTC?

15 A I know it was during either late summer or  
16 early fall of '93. I'm not really sure exactly when.

17 Q I'm going to show you a document. This may  
18 not be your document, but it does refer to a  
19 conversation; FBI 1542, dated August 20, 1993 from  
20 Steve Irons.

21 A Okay.

22 Q The first sentence of this memo states that



1 "wrote or telephoned SSA Kendrick at FBI HQ to  
2 advise the Resolution Trust Corporation had advised  
3 it would provide a referral concerning Madison  
4 Guaranty Savings & Loan by September 2, 1993."

5 A Okay.

6 Q Do you recall being notified of the  
7 expected referrals concerning Madison by Mr. Irons?

8 A No, I do not recall the telephone  
9 conversation, but as I said, again, I just don't  
10 recall the conversation. I don't deny that it  
11 happened.

12 Q On this memo, it says "subject: Thomas W.  
13 Anderson; et al, FAG/SBA."

14 A Yes.

15 Q Could you explain what that refers to?

16 A This is the caption of the case, what we  
17 refer to as the case caption, Thomas W. Anderson  
18 would be the subject in the matter; et al., of  
19 course, is the nomenclature for and others. Fraud  
20 against the government/Small Business Administration  
21 is the nature of the violation, and Little Rock is  
22 reflected as the OO, or office of origin.

1 Q Is it your understanding that this refers  
2 to the Mozark investigation?

3 A I have no idea because I don't know who  
4 Thomas Anderson is.

5 MS. SIMONTON: Excuse me. Can you let him  
6 read the whole document and then -- since he's  
7 never -- if you're going to ask him questions about  
8 it.

9 MS. FISHER: Absolutely. I wasn't going  
10 to ask him questions about the whole document. I was  
11 just curious about that one thing, I wanted to see if  
12 this refreshed his recollection regarding the  
13 telephone conversation. But take your time,  
14 absolutely.

15 (Witness reviewed the document.)

16 THE WITNESS: Okay.

17 BY MS. FISHER:

18 Q Does that refresh your recollection  
19 regarding a telephone conversation you may have had  
20 with Mr. Irons?

21 A The part about keeping alert for any  
22 questions from Justice indicating interest in this

1 case, I recall a conversation with Mr. Irons in which  
2 he did mention that.

3 Q Did you receive or did you become aware of  
4 any questions from the Department of Justice at that  
5 time?

6 A I did not, no. As he has indicated in this  
7 memo, I had been asked questions about what was going  
8 on with Madison by my superiors, as he indicated in  
9 this memo, approximately two weeks prior to August  
10 16, and I think that was about the time that my  
11 E-mail was prepared.

12 Q Do you recall Mr. Irons telling you that  
13 the Little Rock office was planning on opening a case  
14 file on Madison Guaranty prior to receipt of the  
15 referrals?

16 A That I don't recall.

17 Q Do you recall Mr. Irons telling you that a  
18 Little Rock attorney had traveled to Washington to  
19 meet with unknown officials to attempt to have the  
20 investigation quashed?

21 A I recall him mentioning someone traveling  
22 to D.C., but I don't recall the specifics of the

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1 information that he spoke of. I mean I had several  
2 conversations with Steve during the course of this  
3 entire thing, and I don't specifically remember him  
4 making mention of having information quashed.

5 Q Do you recall ever learning or discussing  
6 with Steve at any time this issue?

7 A No, I don't.

8 Q Do you recall discussing with Mr. Irons  
9 what the scope of the investigation related to  
10 Madison would be in August of 1993?

11 A No, because again, it was something that  
12 was being handled primarily by the governmental fraud  
13 unit, and we had no conversations regarding the scope  
14 of the investigation, as I recall.

15 Q Mr. Kendrick, I would like to show you a  
16 document marked FBI 1028 dated 9/2/93 and ask you  
17 whether you prepared this document.

18 (Witness reviewed the document.)

19 A You know, I'm really not sure if I prepared  
20 this document. This one (indicating) I prepared.

21 Yeah, I'm --

22 MS. SIMONTON: Can you clarify, when you

1 say this one or that one, which pages you're  
2 referring to?

3 THE WITNESS: Yeah, I'm referring to FBI  
4 0001029 as being one that I prepared and I am not  
5 sure if I prepared 00001028. This may have been  
6 prepared by Jane Erickson. I don't recall. I may  
7 have prepared it but I'm not certain.

8 BY MS. FISHER:

9 Q Do you recall being advised by the Little  
10 Rock field office that the RTC referrals that were  
11 expected relating to Madison sometime in September of  
12 '93 contained information relating to Jim Guy  
13 Tucker, the current governor of Arkansas?

14 A Yes, I believe there was mention of -- I  
15 don't recall in the conversations but upon reviewing  
16 the criminal referral form, I certainly became aware  
17 of Jim Guy Tucker's name being mentioned in the  
18 criminal referrals but I don't specifically recall  
19 the conversations.

20 Q Did you review the additional nine criminal  
21 referrals coming out of the RTC relating to Madison?

22 A Yes, briefly.

1 Q Mr. Irons transmitted those referrals to  
2 you?

3 A I don't know if they were transmitted by  
4 Mr. Irons but we did receive a copy of the referrals.

5 Q Who else at FBI headquarters reviewed the  
6 additional RTC referrals?

7 A I'm not sure. I believe Jane Erickson  
8 would have.

9 Q Would your direct supervisor have  
10 received -- strike that.

11 Would your supervisor have received copies  
12 of the additional RTC referrals?

13 A Not unless I provided them. I don't  
14 imagine he would have -- that wasn't the practice for  
15 him to ordinarily receive referrals like that. I  
16 don't recall if I gave him a copy of these or not.

17 Q Do you recall discussing the nine  
18 additional referrals with anyone from the Department  
19 of Justice?

20 A I do not, no.

21 Q Did you attend any meetings with any  
22 officials from the Department of Justice?

1 A No, I did not.

2 Q Other than the 1992 meeting with  
3 Mr. Mueller and Mr. Raphaelson, was there any other  
4 meeting that you attended with officials from the  
5 Department of Justice relating to the Madison  
6 investigation?

7 A No.

8 Q Did there come a time when you became aware  
9 of allegations made by David Hale involving President  
10 Clinton, Jim Guy Tucker, and James McDougal?

11 A I don't recall any specific -- the only  
12 information that I received as it related to this  
13 matter was the criminal referral from Little Rock,  
14 and whatever information that contained concerning  
15 those allegations. I don't recall ever having any  
16 conversations with anyone, frankly, concerning David  
17 Hale and his allegations.

18 Q Did you have any conversations with anyone  
19 in the Eastern District of Arkansas U.S. Attorney's  
20 Office regarding the Madison investigation?

21 A No, not at all.

22 Q Do you recall an issue arising regarding

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1 the recusal of the U.S. Attorney in the Eastern  
2 District of Arkansas from the Madison investigation?

3 A I know that it happened. That information  
4 was communicated to my unit. I don't know if that  
5 was telephonic or by way of teletype. I believe we  
6 received a teletype on it and I communicated that  
7 information to my superiors by way of E-mail.

8 MS. SIMONTON: Can we get a clarification  
9 as to which U.S. Attorney we're talking about?

10 BY MS. FISHER:

11 Q Yes. I thought that I had said --

12 A Paula Casey?

13 Q Yes, I apologize, Paula Casey.

14 A Oh, no.

15 Q And you recall that you were aware that it  
16 happened, is that what you just testified to?

17 A I believe Little Rock communicated that to  
18 us by way of teletype.

19 Q Do you recall, prior to Ms. Casey's  
20 recusal, learning that it was a possibility?

21 A I believe that that information was  
22 communicated to me, and I believe I did an E-mail at

1 that time, stating that there was a possibility that  
2 she was going to recuse herself.

3 Q Do you recall the reason stated for  
4 Ms. Casey's recusal from the Madison investigation?

5 A No, I do not.

6 Q Do you recall anyone within the FBI  
7 expressing an opinion on whether Ms. Casey should  
8 recuse from the Madison investigation?

9 A No, I do not.

10 Q Do you recall what the substance of the  
11 E-mail that you were referring to was?

12 A I think it was just an informational E-mail  
13 to my boss, saying that she was going to be recusing  
14 herself. I don't think there was anything more  
15 substantial in it than that. There may have been,  
16 but that's my recollection.

17 Q Do you ever recall hearing that the  
18 director of the FBI wanted Ms. Casey to recuse  
19 herself from the Madison investigation?

20 A I don't have any knowledge of that.

21 Q Do you recall having any discussions with  
22 Steve Irons regarding Ms. Casey's recusal?

1 A I believe Steve was the one who told me  
2 about the possibility of it happening.

3 Q But what, if any, action did you take after  
4 receiving the second set of RTC criminal referrals  
5 relating to Madison?

6 A I believe I prepared an E-mail giving a  
7 breakdown of the various referrals and communicated  
8 that to my unit chief, but at that same time, I think  
9 it was during this time that the decision was made  
10 that all of these matters were going to be handled by  
11 the governmental fraud unit. And it was shortly  
12 thereafter that I believe my unit was excused from  
13 any responsibility relating to Madison.

14 We had information coming into the  
15 governmental fraud unit and information coming into  
16 the financial institution fraud unit. And I believe  
17 the decision was made look, we need to streamline  
18 this and get it into one point of contact.

19 Q Who made that decision?

20 A I don't know. I would imagine the section  
21 chief, Mr. Kubic.

22 Q Was Ms. Erickson, then, the point of



1 contact at FBI headquarters on that matter?

2 A That's correct.

3 Q It would have been Ms. Erickson that was  
4 dealing directly with the Little Rock field office  
5 relating to Madison issues?

6 A That's correct.

7 Q Do you recall learning that the first  
8 criminal referral, relating to Madison Guaranty  
9 Savings & Loan criminal referral number C0004, was  
10 declined by the U.S. Attorney's office in Little Rock  
11 in October of 1993?

12 A I later learned of that, but I was not made  
13 aware of that fact until later.

14 Q After 1994, for example?

15 A Sometime during 1994, I believe, yes.

16 Q Do you recall whether the Madison  
17 investigation had been consolidated in the  
18 governmental fraud unit prior to October 27, 1993?

19 A That I'm not sure of.

20 Q Do you recall having any discussions with  
21 Mr. Irons regarding the decision to decline  
22 prosecution on criminal referral C0004?

1 A No, I don't specifically recall any  
2 conversations.

3 Q Did you have any discussions with Mr. Irons  
4 relating to the substance of the nine additional RTC  
5 criminal referrals?

6 A I believe that I did, and it probably would  
7 have occurred after we actually received the  
8 referrals. But again, I don't think there was  
9 anything of a substantial nature discussed as it  
10 related to the cases, because again, that was during  
11 this transitional period.

12 Q Did Mr. Irons express an opinion relating  
13 to the substance of the nine additional criminal  
14 referrals to you?

15 A Not that I'm aware of, but I would assume  
16 that they felt that there was merit to them because  
17 they did in fact open -- I know they opened subfiles  
18 on each of the referrals.

19 Q Did you ever become aware of documents from  
20 the Small Business Administration going to the White  
21 House in November of 1993?

22 A No, I don't have any knowledge of that.

1 Q Did you or anyone in your office have any  
2 contacts with any present or former employee of the  
3 White House related to the first criminal referral on  
4 Madison C0004?

5 A Not that I'm aware of.

6 Q How about the second set of criminal  
7 referrals?

8 A I don't have any knowledge of that.

9 Q Do you have any knowledge that Mr. Irons  
10 had any contacts with the White House regarding the  
11 first Madison criminal referral?

12 A No, I do not.

13 Q The second set?

14 A No.

15 Q Do you have any knowledge of whether the  
16 director of the FBI had any contacts with any present  
17 or former employee of the White House related to the  
18 first criminal referrals, C0004?

19 A No, I do not.

20 Q How about the second set?

21 A No.

22 Q Do you have any knowledge that any employee

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1 from the White House ever requested documents from  
2 the FBI relating to the Madison investigation?

3 A No, I have no information relating to that.

4 Q Do you have any knowledge that anyone from  
5 the White House requested documents from the RTC  
6 relating to the Madison criminal referrals?

7 A I don't have any information regarding  
8 that.

9 Q Did you have any further involvement with  
10 the criminal referrals related to Madison Guaranty  
11 Savings & Loan after the Madison investigation was  
12 consolidated sometime in late 1993?

13 A I was involved in preparing information for  
14 Mr. Verinder in 1994 as it related to certain aspects  
15 of Madison, and again, it was primarily the financial  
16 institution fraud unit's role in what happened. It  
17 was a chronology that Jane and I both sat down and  
18 prepared and hammered out, but other than the  
19 chronology, no other involvement.

20 Q Who asked that you do the chronology,  
21 Mr. Verinder?

22 A Mr. Verinder, yes.

1 Q Other than Mr. Verinder and Mr. Kubic and  
2 Mr. Dick, are there any other employees at FBI  
3 headquarters whom you had conversations regarding the  
4 Madison investigation with?

5 A I'm sure there are. Mr. Carey.

6 Q Who is Mr. Carey?

7 A Another agent within the financial  
8 institution fraud unit. We had the same  
9 responsibilities, different offices. Other agents  
10 assigned to the unit; Steve Yount, I think I  
11 mentioned his name; but nothing in a substantial  
12 sense.

13 MS. FISHER: If you would just give me a  
14 minute, I might be almost finished.

15 MR. COLE: Off the record?

16 MS. FISHER: Sure.

17 (Recess.)

18 BY MS. FISHER:

19 Q Back on the record.

20 Mr. Kendrick, other than yourself, was  
21 there anyone else at headquarters that was basically  
22 Mr. Irons's point of contact prior to Ms. Erickson?

1 A That I'm not aware of.

2 Q When the second set of RTC criminal  
3 referrals was received by the Little Rock office, did  
4 Mr. Irons discuss the scope of the investigation  
5 relating to Madison with you?

6 A Not that I can recall. Again, I know we  
7 talked about the referrals in general, but other than  
8 Little Rock opening separate subfiles on the  
9 referrals, no, we didn't really discuss the substance  
10 of the referrals, or investigative strategy, or  
11 things of that nature.

12 Q It's my understanding that an investigation  
13 had already been opened relating to Madison in August  
14 of 1993 by the Little Rock field office --

15 A Okay.

16 Q -- is that correct?

17 A I believe it was, but I'm not certain.

18 Q And what I wanted to ask you is if you have  
19 an understanding of how the investigation, which was  
20 already open related to Madison, related to the nine  
21 new referrals that were received later in 1993 from  
22 the RTC.

1 A No, I really don't know what the connection  
2 is there. And again, I want to reiterate that at  
3 some point during the time Steve Yount was assigned  
4 to the unit, he assumed responsibility for Little  
5 Rock and that was during the summer of '93. So  
6 again, my contact with Little Rock, even though I did  
7 speak with Steve Irons on occasion, my contact was  
8 rather limited.

9 Q So you have no knowledge of what the scope  
10 of either investigation -- well, strike that.

11 Do you have any knowledge of how the scope  
12 of the Madison investigation changed, if at all,  
13 after the nine new RTC referrals were received in  
14 late 1993?

15 A No, I don't, other than the opening of  
16 subfiles in relation to the new nine referrals.

17 MS. FISHER: I think that's all I have.

18 Thanks.

19 EXAMINATION

20 BY MR. COLE:

21 Q Mr. Kendrick, my name is Lance Cole, I'm a  
22 member of the Minority staff of the Special Committee

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1 and I would like to ask you some additional questions  
2 on some of the same topics that Ms. Fisher has  
3 already covered. I'll try not to be unnecessarily  
4 repetitive, but there may be some repetition.

5 A Sure.

6 Q If I could direct your attention back to  
7 your previous testimony about when you arrived at FBI  
8 headquarters in September of 1992, during your first  
9 week at headquarters, and learned of what, for ease  
10 of reference, I'll refer to as the 1992 Madison  
11 Guaranty criminal referral.

12 Is it your best recollection that you  
13 learned of that from your supervisor, Mr. Dick?

14 A I believe that that's where I first learned  
15 or first heard of anything in relation to this  
16 matter. I believe Mr. Dick indicated to me that  
17 something was going on in Little Rock and to just  
18 keep my eyes open for anything that might come across  
19 my desk that related to that matter, but yes, it was  
20 during that first week. It was a rather innocuous  
21 comment.

22 Q Did you have any understanding as to what

1 Mr. Dick meant when he said something was going on in  
2 Little Rock?

3 A No. I mean I had no previous knowledge of  
4 what was going on in this case, and I don't believe  
5 he had enough information to really know what was  
6 going on either at the time.

7 Q Did Mr. Dick know or communicate to you  
8 that there was a criminal referral involved?

9 A He did indicate to me that there was a  
10 criminal referral.

11 Q And do you know what the basis of his  
12 knowledge was?

13 A No, I do not.

14 Q Do you know whether he had been informed of  
15 that criminal referral by the FBI's Little Rock field  
16 office?

17 A I don't have any knowledge of the basis of  
18 his knowledge.

19 Q Did you know at that time whether Mr. Dick  
20 or others in the financial institutions fraud unit at  
21 FBI headquarters had received an inquiry from the  
22 Department of Justice concerning that matter?

1 A I later became aware of that, but at the  
2 time, I don't recall there being any specific mention  
3 of that.

4 Q And when did you later become aware of  
5 that?

6 A I think it was probably in early October of  
7 '92. I think it was prior to the meeting that we  
8 had with Mr. Mueller and Mr. Raphaelson.

9 Q What did you learn at that time?

10 A That's really all I knew, that there was  
11 something very general.

12 Q Did you learn then or later who at the  
13 Department of Justice had inquired?

14 A No, I did not.

15 Q Do you have any knowledge as to whether it  
16 was Mr. Raphaelson?

17 A I don't know.

18 Q Did you have any knowledge at that time  
19 that the Department of Justice had received a press  
20 inquiry on this matter?

21 A I had no knowledge of that, no.

22 Q I would like to show you a document that's



1 marked FBI 960 through FBI 962 which I believe is the  
2 chronology that you referred to earlier. If you  
3 don't mind since I only have one copy, I --

4 MS. FISHER: I think it might be in here,  
5 Lance.

6 MR. COLE: Thank you.

7 BY MR. COLE:

8 Q If I could direct your attention to the  
9 third entry on the first page, page 960, the first --  
10 your testimony, I believe, was that you and  
11 Ms. Erickson prepared this chronology for  
12 Mr. Verinder?

13 A We were two of the people involved in  
14 that. Mr. Dick also assisted.

15 Q You anticipated my next question because I  
16 was trying to determine the source of the third entry  
17 regarding a press inquiry. What do you recall about  
18 that?

19 A Just what we've discussed earlier, and  
20 that's what I was basing my answers on, my knowledge  
21 of this chronology. I don't have any other  
22 information than what's reflected on the chronology.

1 Q I would like to show you another document  
2 numbered FBI 1062, which has your name on the top  
3 right corner and appears to be a draft of that  
4 chronology. There's an entry, handwritten entry, on  
5 9/22/92 that I believe says "E-mail to: Verinder  
6 from: Kubic. Re: Ira hears rumbling on case."

7 A Yes.

8 Q Is that your handwriting?

9 A This is not, no.

10 Q You recognize the handwriting?

11 A No, I do not.

12 Q And do you have any knowledge at all of the  
13 subject referenced in that entry, particularly the  
14 "Ira hears rumbling on case"?

15 A No, I don't. The only thing I would  
16 comment on is that 9/22 was the day before I arrived  
17 at headquarters.

18 Q I understand that.

19 A So I don't have any knowledge of this.

20 Q You have no knowledge as to what that might  
21 refer to?

22 A No.

1 Q Thank you. The chronology that is in front  
2 of you, on page 961, the second page, it has an entry  
3 that I take it to be a reference to the meeting that  
4 you previously testified to between FBI officials and  
5 Department of Justice officials on the chronology  
6 date of October 8, 1992?

7 A Yes.

8 Q There's been some testimony that Mr. Potts  
9 was present at that meeting. Do you have a  
10 recollection as to whether he was or was not?

11 A I don't recall Mr. Potts being there, and  
12 again, I could be wrong. But I just remember  
13 Mr. Verinder and Mr. Kubic being there, and  
14 Mr. Verinder speaking for the FBI.

15 Q That's consistent with what the documents  
16 indicated.

17 A Yes.

18 Q I haven't seen any reference in the  
19 documents to Mr. Potts being there but there's  
20 some --

21 A I'm fairly positive Mr. Potts was not  
22 there.

1 Q Okay, that's helpful. The teletype that  
2 was sent to FBI Little Rock, which you previously  
3 testified to -- I'll give you a copy of it if you'd  
4 like to refer to it, FBI 523 through 525 -- that is  
5 the teletype that you prepared after the meeting on  
6 October 8?

7 A That's correct.

8 Q And I believe you said you consulted with  
9 Mr. Verinder before you prepared that teletype; is  
10 that correct?

11 A I consulted with my unit chief, Mr. Dick,  
12 who I believe in turn consulted with Mr. Kubic and  
13 Mr. Verinder prior to this teletype being sent out.

14 Q And did the Department of Justice officials  
15 that you met with, Mr. Mueller and Mr. Raphaelson,  
16 direct you to prepare a teletype, or was that  
17 something that you and the other FBI officials  
18 decided to do after the meeting?

19 A This was something decided upon by  
20 Mr. Kubic and Mr. Verinder.

21 Q And was the Department of Justice informed  
22 of this teletype?

1 A I'm not aware of that. I don't know.

2 Q How was the response date in this teletype  
3 arrived at?

4 A That was something that was just given to  
5 me by Mr. Dick. I have no information as to -- I  
6 think they just picked an arbitrary date. I don't  
7 know.

8 Q For the record, the date we're referring to  
9 is close of business, October 16, I believe is what  
10 the teletype refers to.

11 A I believe that's correct. Yes.

12 Q So that would be essentially a one-week  
13 turnaround for review?

14 A That's correct.

15 Q In your experience in RTC criminal  
16 referrals that are handled by the FBI field offices,  
17 is that time period consistent with what you would  
18 expect to see in a case like this for the kind of  
19 preliminary review that you're directing in that  
20 memorandum?

21 A I would think that a one-week period would  
22 be adequate to take a look at the documents and find

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1 out if there's anything. They had already had access  
2 to the criminal referral, and this was just a  
3 question of looking at the exhibits that were in the  
4 possession of the U.S. Attorney's Office. And one  
5 week would, in my estimation, be adequate to  
6 determine whether or not you had a check kite or not.

7 Q Had a memorandum like this ever been sent  
8 out on another criminal referral, to your knowledge?

9 A Not by me. No, I don't have any knowledge  
10 of any others going out, but again, we were rather  
11 segmented in our activities.

12 Q Did you have any understanding from  
13 Mr. Verinder or Mr. Kubic or anyone else inside the  
14 bureau as to whether a memorandum of this nature,  
15 teletype of this nature, had ever been sent out  
16 before?

17 A We didn't have any discussions in that  
18 regard.

19 MR. SGRO: When you say was "sent out  
20 before," you mean on this case, or ever before?

21 MR. COLE: Any case, any time, ever.

22 BY MR. COLE:

1 Q I'm trying to understand. Mr. Kendrick  
2 testified that the Department of Justice officials  
3 instructed that this was to be handled in the normal  
4 or the usual way. And I'm then comparing that to  
5 what subsequently happened, and trying to come to  
6 some understanding as to what is normal and usual and  
7 what is not, to the extent you can help on that  
8 question.

9 A Normally field offices are given a lot of  
10 discretion as to when and when not to open a  
11 particular case. We were not instructing them to  
12 open an investigation into this matter, but to  
13 initiate a limited investigation aimed only at a  
14 review of the documents and make some determination  
15 as to what their course of action might be after that  
16 review. So this was certainly in keeping with the  
17 latitude that we normally afford field offices in  
18 determining whether or not they're going to work a  
19 case.

20 Q What was the purpose of that review that  
21 the Little Rock office was directed to do?

22 A It's my understanding that the purpose of

1 the review was to determine if in fact there was a  
2 viable case against the identified subjects in the  
3 criminal referral, those being Mr. McDougal and Lisa  
4 Anspaugh, and to determine the involvement, if any,  
5 of the witnesses.

6 Q And help me understand, recognizing that  
7 this was an unusual criminal referral because of the  
8 persons involved, but notwithstanding that, is that a  
9 function that the bureau would normally perform as  
10 opposed to the local U.S. Attorney's Office?

11 A In looking at the evidence, generally it's  
12 something that the bureau would ordinarily do. It's  
13 rare that a U.S. Attorney's Office, in my experience,  
14 ever has benefit of a review of documents or  
15 exhibits, so it was different in that regard, the  
16 fact that the U.S. Attorney's Office actually had the  
17 exhibits as opposed to the FBI.

18 Generally when we get a criminal referral  
19 in and it's referred by one of the regulatory  
20 agencies, if there are exhibits, and generally there  
21 are not exhibits, the referral and the exhibits will  
22 go to the investigative entity as opposed to the

1 prosecutive entity.

2 Q Well, actually that's an interesting  
3 point. If I could refer you back to the first page  
4 of the chronology that I have given you, page 960,  
5 the second entry, last line indicates that "a  
6 separate referral with 300 exhibits is provided to  
7 the U.S. Attorney's office in Little Rock." I  
8 understood that to indicate that -- and please  
9 correct me if I'm wrong -- that the copy of the  
10 referral that went to the U.S. Attorney's Office  
11 contained the 300 exhibits while the copy that went  
12 to the bureau did not?

13 A That's correct.

14 Q Was that unusual in your experience?

15 A Yes.

16 Q Do you have any knowledge as to why in this  
17 case the U.S. Attorney's Office was given the copy  
18 with the exhibits?

19 A I don't. No, I don't have any specific  
20 knowledge. I don't have any general knowledge for  
21 that matter.

22 I have my opinion, but --

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1 Q Would you share your opinion with us?

2 A In my estimation and upon having benefit of  
3 looking at this now, two years, three years later, it  
4 appeared to me as if there was an effort being made  
5 to have this matter pursued, prosecuted in a very  
6 forthwith manner.

7 Q When you say an effort was being made, your  
8 impression was that that effort was by whom?

9 A By the RTC, by Jean Lewis within the RTC.

10 Q And other than what we've just been  
11 discussing, the transmittal of the referrals to the  
12 U.S. Attorney's Office rather than the bureau, do you  
13 have other bases for that view?

14 A Just based on my subsequent -- I learned  
15 through a review of documents later, and I can't  
16 recall where I saw the document, but I know that  
17 Steve Irons had a conversation with Ms. Lewis in  
18 which she attempted to elicit information concerning  
19 the status of the referral, and he felt it was  
20 important enough to make a record of that  
21 conversation because of the questions that were asked  
22 by Ms. Lewis.



1 Q Did you have any conversations with  
2 Mr. Irons about his conversations with Ms. Lewis?

3 A No, I did not.

4 Q Are you aware whether others at FBI  
5 headquarters had conversations with Mr. Irons about  
6 his conversations with Ms. Lewis?

7 A I believe he spoke to Ms. Erickson about  
8 those but I'm not certain.

9 Q Do you have any knowledge as to what he  
10 told Ms. Erickson?

11 A No, I don't.

12 Q But you have some understanding that it was  
13 about conversations with Ms. Lewis?

14 A I believe so. I'm not really certain.

15 Q Do you know the time frame of those  
16 discussions between --

17 A I believe they would have been in the  
18 latter part of 1993.

19 Q I would like to show you another document  
20 which I don't believe we've previously reviewed so  
21 take as much time as you would like to look at it.  
22 It's Department of Justice numbers 7181 through

1 7191. It's a teletype from FBI Little Rock to  
2 director of the FBI, marked "immediate priority,"  
3 dated October 7, 1992.

4 MR. COLE: Let's take a quick break.  
5 (Recess.)

6 BY MR. COLE:

7 Q Back on the record.

8 Mr. Kendrick, I think before we took a  
9 break, I had shown you a document that, if yours is  
10 numbered the same as the copy I have, begins page  
11 986; is that correct? Actually I have an FBI copy  
12 and you have a DOJ copy but maybe we can work off of  
13 it. It's an October 7, 1992 memorandum from FBI  
14 Little Rock to the FBI director.

15 A Yes.

16 Q Do you recall, had you received this  
17 memorandum prior to the October 8 meeting that we had  
18 previously discussed?

19 A I believe so. Yes, I believe -- yes.

20 Q Was this memorandum discussed at the  
21 October 8 meeting?

22 A I don't believe there was any specific

1 discussion of this teletype from Little Rock at the  
2 meeting.

3 Q Do you know if the Department of Justice  
4 officials present, who I understand were Mr. Mueller  
5 and Mr. Raphaelson, were aware of this memorandum at  
6 that time?

7 A I'm not aware. I'm not sure if they were  
8 or weren't. Again, Mr. Verinder did the talking for  
9 the bureau, and I'm not sure what information  
10 Mr. Raphaelson or Mr. Mueller might have had prior to  
11 the meeting.

12 Q The reason I ask, this is a lengthy  
13 memorandum and I don't want to suggest that I'm  
14 taking small pieces of it out of context, but it  
15 appears to be -- and please correct me if you believe  
16 I'm mischaracterizing it -- a fairly detailed  
17 11-page, 10-1/2-page analysis of the 1992 referral by  
18 the Little Rock office of the FBI; is that correct?  
19 Would that be a fair characterization?

20 A That's correct.

21 Q And I guess it causes me some confusion in  
22 my mind in understanding what happened after the

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1 October 8 meeting when this memorandum seems to --  
2 teletype seems to indicate that the Little Rock  
3 office had both reviewed the referral, and I  
4 understand not the exhibits but had reviewed the  
5 referral, and discussed it with the U.S. Attorney and  
6 First Assistant U.S. Attorney in Little Rock.

7 A Uh-huh.

8 Q And my question would be, in light of the  
9 information in this memorandum, why it was necessary  
10 to send the directive that was sent on October 9 and  
11 conduct the preliminary review.

12 A Well, I think it had to do exactly with the  
13 fact that the exhibits had not been reviewed and the  
14 fact that, even though this was in the major scheme  
15 of financial institution fraud investigations, this  
16 one on its face was not particularly significant. It  
17 was certainly sensitive due to the fact that the  
18 President and Mrs. Clinton were named as witnesses.

19 And coupled with the indication, statement  
20 on the last page that the First Assistant, due to the  
21 sensitive circumstances, had indicated his intention  
22 to advise Justice of this matter. I believe it was a

1 prevailing sentiment within the bureau that we  
2 should, before jumping to any conclusions, at least  
3 examine the documents before making a decision  
4 regarding any investigative course of action.

5 Q And I guess my confusion stems from the  
6 prior page, six lines, five lines up from the bottom  
7 on page 10 of the teletype, where it notes "U.S.  
8 Attorney, Eastern District of Arkansas, opined the  
9 course of action was to have legal research conducted  
10 on the statute of limitations on the various bank  
11 fraud statutes and complete in-depth analysis of  
12 voluminous exhibits ancillary to the referral."

13 My question is, if the U.S. Attorney is  
14 reviewing this matter and conducting legal research  
15 and reviewing the referrals, what's the role of the  
16 bureau at this point?

17 A The role is what it always is in financial  
18 institution investigations and any other  
19 investigations, and that is to look at the evidence.  
20 That's just something that we typically do in any  
21 matter and it's something that, based on our meeting  
22 with the Justice officials, we wanted to pursue this

1 case in the same fashion as we would any other  
2 investigation.

3 Q Well, I guess not to belabor the point, but  
4 that's my confusion. When you say based on your  
5 meeting with the Justice officials, you wanted to  
6 pursue this in the same manner that you would another  
7 investigation, would you normally, where a U.S.  
8 Attorney has reviewed a referral, come to a  
9 conclusion as to a course of action and laid that out  
10 to the bureau? Is it normal for headquarters to  
11 direct a different course of action?

12 A Well, we weren't directing the U.S.  
13 Attorneys's here to do anything.

14 Q No, I understand that. Was it normal for  
15 the bureau in Washington headquarters to direct the  
16 local office to conduct a different course of action?

17 A I'm not so sure if it's a different course  
18 of action. I think they wanted to do whatever they  
19 had to do, "they" being the U.S. Attorney's Office.  
20 I believe the opinion of our -- and again, I'm  
21 hypothesizing, is that we have to do what we have to  
22 do, and that is take a look at the evidence,

1 regardless of what the U.S. Attorney's Office is  
2 doing. This was not a prosecutive opinion.

3 This was simply, I think, a recitation of  
4 what the correct course of action for the U.S.  
5 Attorney would be. I believe our superiors, or my  
6 superiors, looked at this and said well, we still  
7 need to take a look at the exhibits; again, keeping  
8 in mind that this was unusual for the U.S. Attorney's  
9 Office to actually have the exhibits, in my opinion.

10 Q Do you recall at the time this was taking  
11 place, October 8, thereabouts, was there an issue as  
12 to the access of the FBI to these exhibits?

13 A You mean in terms of resistance?

14 Q In terms of being provided the exhibits by  
15 the U.S. Attorney's Office.

16 A I don't recall that there was a problem  
17 with that. I don't recall. I just don't recall.

18 Q The October 16 memorandum that I understand  
19 to be FBI Little Rock's response to the October 9  
20 teletype directing that a limited investigation be  
21 conducted, what was done with that memorandum when it  
22 was received at FBI headquarters?

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1 A In terms of action taken?

2 Q Yes.

3 A Nothing. I was instructed to --  
4 apparently, based on the information contained in  
5 that teletype, I was instructed to contact the RTC  
6 and check on the status of those two referrals that  
7 were mentioned in the teletype. It was my  
8 understanding that apparently our management was in  
9 concurrence with Little Rock's decision.

10 Q I would like to come back to the two  
11 institutions that are mentioned in that teletype, but  
12 before we do that, the October 16 teletype itself and  
13 the views of the Little Rock office that are  
14 expressed in that teletype, was that communicated by  
15 the bureau to the Department of Justice?

16 A That I'm not aware of. That would have  
17 occurred at levels higher than mine.

18 Q So in the first instance, this memorandum,  
19 even though it is marked to director of the FBI, at  
20 what level would it have been received in the first  
21 instance in the bureau headquarters in Washington?

22 A Well, when these teletypes are sent, they

1 come into our communications center and they are  
2 routed to the appropriate investigative and  
3 administrative entities that handle those. That one  
4 would have come to probably the white-collar crime  
5 section, would have come to our unit, would be signed  
6 off by either myself or Ron, a copy to the section  
7 chief, copies to the deputy assistant director, which  
8 would have been Mr. Verinder, and perhaps even a copy  
9 to Mr. Potts, who was the deputy -- or the head of  
10 the criminal investigative division at the time.

11 Q And did you have an understanding based on  
12 your conversations with Mr. Verinder and others in  
13 which the October 9 teletype was discussed, the  
14 teletype to Little Rock, as to who would report, or  
15 if there would be a report, back to the Department of  
16 Justice when you received a response from Little  
17 Rock?

18 A I had no knowledge of that, no.

19 Q Do you recall, did you provide this  
20 response to Mr. Verinder when it came in?

21 A My boss, Ron Dick, received a copy of that  
22 teletype, and I can't tell you what happened to it

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1 after that.

2 Q Thank you. The third page of the October  
3 16 teletype, which I believe you have a copy of --  
4 I'll put a copy in front of you. If you could look  
5 at that page.

6 A This is document FBI 526?

7 Q Right. And I guess the third page would be  
8 528. Is that the page that I just directed you to?

9 A That's correct, yes.

10 Q The reference there to two other Arkansas  
11 financial institutions, I believe Savers Savings and  
12 First Federal?

13 A Yes.

14 Q Are those the institutions that you  
15 previously testified you had follow-up discussions  
16 with Mr. Donahue about?

17 A That's correct.

18 Q In your first discussion with Mr. Donahue,  
19 was that a request by you on behalf of the bureau to  
20 the RTC to allocate investigative resources to those  
21 two institutions?

22 A No, it was my understanding at that time



1 that the criminal referrals were in the process of  
2 being prepared for those but Little Rock had yet to  
3 receive them. And I was calling the RTC to check on  
4 the status of those referrals, because, in the  
5 opinion of Little Rock, those were more significant  
6 criminal violations than the one involving the check  
7 kiting referral. And based on that request from  
8 Little Rock, based on the request as it's stated in  
9 this teletype, that's what I did.

10 Q And at that time did Mr. Donahue tell you  
11 that he would direct his staff to follow up on those  
12 two institutions?

13 A Yes, he indicated that he would look into  
14 the matter, and my boss sent a tickler, as I recall,  
15 for me to check back, within 90 to 120 days to check  
16 on the status again of those referrals.

17 Q And I believe you testified earlier that  
18 Mr. Donahue indicated that it was Ms. Lewis at the  
19 RTC who was the criminal investigator?

20 A Yes, that's correct.

21 Q Did you have an understanding at that time  
22 that Ms. Lewis was the same investigator who had

1 prepared the 1992 criminal referral?

2 A I believe so, yes.

3 Q And did you have any understanding at that  
4 time, at the time of your discussion with  
5 Mr. Donahue, as to whether Ms. Lewis would continue  
6 to work on the Madison investigation?

7 A I don't recall discussing the Madison  
8 investigation at all with Mr. Donahue.

9 Q And then I believe you testified that your  
10 next discussion with Mr. Donahue was after the  
11 120-daytime period had elapsed and you had not  
12 received anything from the RTC; is that correct?

13 A I believe that's correct, yes.

14 Q And what did Mr. Donahue say at that time  
15 when you asked him about those two institutions?

16 A I believe Mr. Donahue indicated that the  
17 criminal referrals for both of those institutions  
18 were still in the process of being prepared, and I  
19 had no further contact with him in reference to those  
20 criminal referrals.

21 Q Did he indicate at that time whether  
22 Ms. Lewis was working on the two institutions in

1 question, Savers Savings and First Federal?

2 A I don't recall. I don't recall him  
3 mentioning any specific names.

4 Q In light of your, I'll use inquiry or  
5 request, whatever is the appropriate term, I don't  
6 want to mischaracterize your discussion, your first  
7 discussion with Mr. Donahue. But in light of your  
8 communication with Mr. Donahue on behalf of the  
9 bureau about the other two institutions, would you  
10 have been surprised to learn that Ms. Lewis continued  
11 to work on the Madison investigation?

12 A No, it wouldn't have surprised me. I would  
13 expect her to since she was the individual who  
14 initiated the original criminal referral.

15 Q Would you expect her to give priority to  
16 the other two institutions, in light of your  
17 communication with Mr. Donahue?

18 A I would hope that Mr. Donahue would have  
19 enlightened her concerning our concerns as it related  
20 to these two particular instances, but again, I don't  
21 know how RTC prioritizes their investigations.

22 Q If I could look at the document that's in

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1 front of you, just to be as clear as we can on this,  
2 this FBI teletype states that "Little Rock division  
3 previously identified two failed Little Rock savings  
4 and loans, Savers Savings Association and First  
5 Federal of Arkansas, to RTC as having significant  
6 criminal potential. Losses suffered were  
7 approximately 900 million at First Federal of  
8 Arkansas and 650 million at Savers Savings.  
9 Referrals have not been received for these  
10 institutions. It is noted the loss at Madison  
11 Guaranty was 47.7 million.

12 "It is requested FBI headquarters contact  
13 RTC and request an expeditious address providing  
14 referrals on Savers and First Federal, neither of  
15 which has been the subject of investigation or  
16 indictments, and which are believed to have much  
17 greater prosecutive potential than Madison Guaranty  
18 Savings & Loan. This will repeat a request made by  
19 Little Rock to the regional RTC office in early  
20 1992."

21 Does that indicate a priority as between  
22 Madison Guaranty on the one hand and the other two

1 institutions on the other?

2 A I can tell you what the FBI's investigative  
3 priorities were at that time as they related to  
4 financial institution fraud. Failures were the  
5 number one priority, and anything involving losses in  
6 excess of a million dollars were considered the next  
7 priority, but failures were during that time, and  
8 probably still now -- I'm not involved in financial  
9 institution frauds any longer -- but failures would  
10 continue to be the number one priority within the  
11 realm of financial institution fraud. So those are  
12 consistent with our investigative priorities, the  
13 request for the referrals on the two institutions.

14 Q And do you have any knowledge of if and  
15 when referrals for those two institutions actually  
16 were received by the bureau from the RTC?

17 A I don't recall. I left the financial  
18 institution fraud unit in December of 1994. I did  
19 not have Little Rock at the time, but to my  
20 knowledge, I don't believe we ever received  
21 referrals.

22 Q But you did previously testify that you

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1 reviewed the referrals that were received from the  
2 RTC in 1993 on Madison, the nine criminal referrals?

3 A Yes, that's correct.

4 Q And from your recollection of your review  
5 of those referrals, did a reading of those referrals  
6 indicate that significant investigation had occurred  
7 prior to the preparation of those referrals?

8 A A significant amount of investigation would  
9 have had to have gone into the preparation of those  
10 referrals, simply because of the volume of the number  
11 of referrals received. I believe there were nine  
12 separate referrals.

13 Q Help me understand the timing. If your  
14 first discussion with Mr. Donahue occurred shortly  
15 after the date of this memorandum, late October we  
16 could generally say, and then you testified that at  
17 the direction of Mr. Verinder, you followed up on  
18 that 120 days later, which would be perhaps late  
19 January/early February --

20 A Probably February or March, yeah.

21 Q -- of 1993?

22 A That's correct.

1 Q And then you continued in your position in  
2 the financial institution fraud unit until at least  
3 the summer of '93 or fall of '93; is that correct?

4 A My position in terms of having oversight  
5 over the Little Rock office, yes.

6 Q Thank you for that clarification. Did you  
7 follow up again after that second discussion with  
8 Mr. Donahue as to these institutions?

9 A I don't believe so. I don't recall having  
10 any further conversations with Mr. Donahue.

11 Q Were you surprised in the fall of 1993 when  
12 you received nine additional referrals on Madison  
13 Guaranty representing significant investigative  
14 effort and had yet received no referrals on the other  
15 two institutions that you had directed the RTC to  
16 look into?

17 A I wouldn't say that I was surprised, but --  
18 no, I can't really say that I was surprised. It did  
19 at -- at least in my opinion, it created the  
20 impression that my front office wanted to know what  
21 was the status of those other investigations because  
22 my E-mails from -- I believe my August 2 E-mail

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1 reflected the fact that we had attempted to generate  
2 the other two referrals from the RTC.

3 Q Do you have any recollection at the time  
4 the what I'll refer to as the 1993 Madison referrals  
5 were received, did anyone in the bureau comment on  
6 the Savers Savings and First Federal as to the status  
7 of those investigations?

8 A I don't recall there being any real  
9 discussion concerning those, the existence of those  
10 cases.

11 Q Do you know whether Mr. Irons had any  
12 discussions with anyone on that subject?

13 A I'm not aware of that.

14 Q So the discussions that you previously  
15 testified to, that you had some recollection of  
16 Ms. Erickson having with Mr. Irons, to the best of  
17 your recollection, don't encompass that subject?

18 A No, not as it relates to those two  
19 institutions.

20 Q If I could direct your attention back to  
21 the chronology that we were looking at before we  
22 began discussing the teletypes.

1 MS. SIMONTON: Which chronology? You gave  
2 him, I think, two.

3 MR. COLE: I gave him a draft and final,  
4 and I'm referring to the final chronology.

5 MS. SIMONTON: FBI 960.

6 BY MR. COLE:

7 Q And if you'll look on the first page of FBI  
8 960, actually if you'll turn to the second page, 961,  
9 there's an entry dated October 16, 1992.

10 A Yes.

11 Q That entry, I believe, refers to a letter  
12 from Arkansas U.S. Attorney Banks to FBI Special  
13 Agent Pettus in Little Rock; is that correct?

14 A Yes, that's correct.

15 Q Did you see that letter at or about the  
16 time that it was prepared?

17 A No, absolutely not. And this was, I  
18 believe Jane Erickson prepared or provided the input  
19 for this part of the chronology, as I recall from my  
20 conversations with her. The first time she saw this  
21 letter was on one of her visits, one of her many  
22 visits to Little Rock.

1 Q So then your recollection is consistent  
2 with the last two lines of that paragraph, which  
3 indicate, in parentheses, "this letter was first  
4 observed by FBI headquarters officials in September  
5 of '93 upon review of Little Rock files in the Mozark  
6 case"?

7 A That's correct, yes.

8 Q Do you have any knowledge, whether obtained  
9 at the time of the preparation of this chronology or  
10 thereafter, as to why Mr. Banks felt it was necessary  
11 to send this letter to Mr. Pettus?

12 A No, I do not.

13 Q I note that the date of that letter is the  
14 same as the date of the October 16 memorandum to FBI  
15 headquarters from FBI Little Rock that we've been  
16 discussing --

17 A Yes.

18 Q -- previously. And while that letter is  
19 not in the record, that being the letter from  
20 Mr. Banks to Mr. Pettus, we can refer to the  
21 chronology here that says "USA Banks further stated  
22 that investigation of this type prior to the upcoming



1 Presidential election could possibly lead to the  
2 denial of rights to the target subject's witnesses  
3 and defendants. USA Banks did state, however, in due  
4 time he would be willing to discuss the limited  
5 examination and possibility of providing some of the  
6 allegations against the McDougals and Lisa  
7 Anspaugh."

8 A Proving some of the allegations.

9 Q Yes, I'm sorry. If you could help me  
10 understand the process here between the bureau and  
11 the Department of Justice, what would have happened  
12 if Mr. Banks had sent the letter that he sent and  
13 that's summarized here, and if Little Rock FBI, upon  
14 reviewing the exhibits, had come to a different  
15 conclusion and sent a different recommendation to  
16 headquarters --

17 A Again, I --

18 Q -- that being a recommendation that further  
19 action be taken on this matter at that time.

20 A I would imagine, given Mr. Banks's position  
21 in this matter, that an attorney from Justice would  
22 have had to have been appointed, if that were the

1 situation, to at least review the matter and make  
2 some kind of determination as to whether or not  
3 prosecution was warranted.

4 It's really difficult for us to pursue  
5 anything if we don't have a prosecutor.

6 Q That's the source of my confusion here, but  
7 the actual -- it's not only -- what I'm getting at is  
8 not only the decision as to whether or not to  
9 prosecute but whether or not to investigate, because  
10 I believe what Mr. Banks is concerned about in his  
11 letter as summarized in this chronology is not  
12 necessarily the prosecution but the investigation.

13 A Well, we shared the same concerns, and  
14 that's why Little Rock was instructed in the teletype  
15 not to do any overt interviews and not to issue any  
16 grand jury subpoenas, realizing that this was a  
17 sensitive matter, but we did believe that a review of  
18 the evidence was warranted.

19 Q On that point, if I could direct your  
20 attention back to the first teletype that Little Rock  
21 FBI sent to FBI headquarters on October 7, and page 7  
22 of that document which I believe you have in front of

1 you.

2 A Yes.

3 Q And in particular, I'm looking at the last  
4 two or three sentences on that page, beginning seven  
5 lines up from the bottom. "It is the opinion of  
6 Little Rock FBI and the United States Attorney and  
7 First Assistant, Eastern District of Arkansas, that  
8 there is indeed insufficient evidence to suggest the  
9 Clintons had knowledge of the check-kiting activity  
10 conducted by McDougal or Anspaugh."

11 My question goes to, in view of that  
12 statement in this memorandum that was received on  
13 October 7, again what the point was of the limited  
14 review that was undertaken, directed to be undertaken  
15 in the October 9 memorandum.

16 A Well, the review did not confine itself to  
17 the witnesses. The review would have concerned all  
18 of the potential subjects, which would have included  
19 McDougal and Lisa Anspaugh and anyone else that was  
20 identified as a potential subject in the matter.

21 Q Recognizing that to be the case, my  
22 question goes to the concerns that Mr. Banks

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1 expressed in his letter, which I believe you said  
2 that the bureau joined in, concerning an  
3 investigation of this nature and the possible effect  
4 on witnesses, so whether or not the Clintons or the  
5 McDougals were the subject of the investigation,  
6 wouldn't the same concerns be present?

7 A For -- as they related to --

8 Q Let me refer back to a summary of  
9 Mr. Banks's letter in the chronology. I'm talking  
10 about his reference to, I believe, the rights of  
11 witnesses but I want to turn to the document. In  
12 other words, I'll try to make my question more  
13 simple.

14 In light of the conclusion expressed in the  
15 teletype that we were just looking at, the October 7  
16 teletype concerning the witnesses; and second, in  
17 light of the concerns expressed in Mr. Banks's  
18 letter, why would it make sense to conduct any  
19 further investigation at this time?

20 A Well, first of all, we weren't privy to  
21 Mr. Banks's letter. The only information we had was  
22 what we received from Little Rock in their teletype

1 of October 7. And again, it did not forward the  
2 issue of whether or not there was an investigation  
3 that should be pursued against the subjects. There  
4 was -- I believe there's an indication in the  
5 teletype that the U.S. Attorney's Office -- excuse  
6 me.

7 On page 5, at the bottom it indicates "the  
8 analysis cited in the last two paragraphs of page 5  
9 clearly indicates probable check kiting activity."  
10 And again, based on that information, Little Rock's  
11 position that yes, there is check kiting activity, we  
12 believed that, in order to make a proper  
13 determination as to whether or not any prosecution  
14 should ensue or any further investigation should  
15 ensue, that it was necessary to review the documents.

16 Q At the October 8 meeting between officials  
17 of the FBI and officials of the Department of  
18 Justice, did anyone from the Department of Justice  
19 indicate that they needed further information about  
20 this matter to report to more senior levels in the  
21 Justice Department?

22 A And I recall this only from looking at my

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1 administrative note in the teletype that went out to  
2 Little Rock, that Mr. Mueller indicated that there  
3 wasn't enough information, he didn't have enough  
4 information on this matter to make any kind of  
5 decision, but not in order to report to any higher  
6 officials at DOJ. There was no mention of any higher  
7 officials, any need to notify anyone higher than  
8 Mr. Mueller.

9 Q And did you have any understanding as to  
10 what the additional information was that was needed  
11 beyond what's in this 10-1/2-page memorandum?

12 A I don't know if Mr. Mueller was privy to  
13 this. This is an FBI teletype. And again, I don't  
14 know what information there was that might have been  
15 discussed between Mr. Verinder and Mr. Mueller before  
16 or after that meeting, so I really can't comment on  
17 that.

18 Q If you could take a moment to review this  
19 10-1/2-page October 7 teletype and compare it to the  
20 October 16 teletype that was received by FBI  
21 headquarters from Little Rock, and tell me what  
22 information there is in the October 16 teletype

1 that's not in this teletype?

2 MS. SIMONTON: Excuse me. I'm going to  
3 object. The two documents speak for themselves. If  
4 you want to ask him about his knowledge, but to have  
5 him sit here and read one and read the other and do  
6 an analysis of two documents, both of which are in  
7 your possession, I think is beyond what he as a  
8 witness knows. You've got the two documents.

9 MR. COLE: Well, I'm not asking him to do  
10 an analysis of the documents. I'm giving him that  
11 opportunity, if he needs it, to refer to the  
12 documents to refresh his recollection, but I can  
13 certainly ask the question without reference to the  
14 documents.

15 BY MR. COLE:

16 Q What did you learn on October 16 that you  
17 didn't already know on October 7?

18 A That Little Rock conducted a review of the  
19 documents.

20 Q And what from that review of the documents,  
21 what specific information did FBI headquarters  
22 receive that it didn't have prior to that time?

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1 A No specific information, other than the  
2 fact that Little Rock remained in a noninvestigative  
3 posture.

4 Q So the conclusion of the Little Rock office  
5 did not change from what was expressed in the October  
6 7 memorandum to what's in the October 16 memorandum?

7 A That's correct.

8 Q And your best recollection today is that  
9 you have no knowledge as to whether or not that was  
10 reported or how it was reported to the Department of  
11 Justice?

12 A I have no information as it relates to  
13 that, no.

14 Q Final question. At the October 8 meeting,  
15 did either Mr. Raphaelson or Mr. Mueller ask that  
16 they be provided further information about this  
17 matter when the bureau had completed its work?

18 A I don't recall there being any mention of  
19 that, no.

20 Q So to ask the question more generally, how  
21 were things left after that meeting? What was to be  
22 done? You've testified in great detail as to what

1 actually was done after you subsequently consulted  
2 with others, but I'm confused as to what Mr. Mueller  
3 and Mr. Raphaelson were asking.

4 A Again, as I stated earlier, Mr. Mueller  
5 indicated at the conclusion of that meeting that this  
6 case shouldn't be handled any differently than any  
7 other FIF investigation, and that's the way it was  
8 pursued.

9 Q Do you know whether Mr. Verinder or anyone  
10 else in the bureau had any subsequent discussions  
11 with Mr. Raphaelson after the October 16 memorandum  
12 was received?

13 A I'm not aware of that. If they did, they  
14 didn't share them with me.

15 MR. COLE: Thank you. I don't have  
16 anything further.

17 EXAMINATION

18 BY MS. FISHER:

19 Q I just have a couple of things. I believe  
20 that you testified earlier, in response to one of  
21 Mr. Cole's questions, that you had the opinion that  
22 an effort was being made by Jean Lewis to have the

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1 criminal referral prosecuted forthwith; is that  
2 correct?

3 A Yes.

4 Q And as a basis for that opinion was the  
5 fact that the exhibits to the criminal referral  
6 relating to Madison were transferred to the U.S.  
7 Attorney's Office, and the second basis you cited was  
8 that, at one point, you recall the fact that  
9 Ms. Lewis may have tried to elicit information  
10 regarding the referral from Mr. Irons.

11 A Yes.

12 Q Do you recall saying that was your basis?

13 A Yes. And again, I prefaced all of that,  
14 though, based on the benefit of two or three years of  
15 being able to look at this after the facts.

16 Q Well, how is it that the fact that the  
17 exhibits were transferred to the U.S. Attorney's  
18 Office shed any light whatsoever on some effort being  
19 made by Ms. Lewis to have this case prosecuted?

20 A It's just very unusual for exhibits --  
21 first of all, exhibits normally remain with a  
22 financial institution, or the regulatory agency, or



1 whoever seizes them, or whoever has care and custody  
2 of them, and we go to the exhibits and take a look at  
3 those.

4 It's highly unusual for exhibits to go from  
5 a regulatory agency to, in my experience, to the  
6 prosecutive entity.

7 Q Do you have that particular experience with  
8 regards to the RTC?

9 A With regards to any regulatory agency,  
10 whether it's the OTS, RTC, FDIC. I've never known of  
11 it happening, let me put it that way.

12 Q With regards to the RTC specifically, do  
13 you have a basis to make that characterization?

14 A Yes, I was a financial institution fraud  
15 supervisor for two years in the Detroit office, and I  
16 had FIF responsibilities as the overall supervisor  
17 while I was at headquarters for 26 months.

18 Q Did you receive other criminal referrals  
19 from the RTC out of Little Rock, or out of the RTC  
20 Kansas City office, did you have any dealings with --  
21 strike that.

22 Did you have any dealings with RTC criminal

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1 referrals coming out of the Kansas City office?

2 A Not particularly out of the Kansas City  
3 office, no.

4 Q Did you have any dealings with other RTC  
5 criminal referrals relating to savings and loans in  
6 Little Rock?

7 A No.

8 Q So do you have a general basis for what the  
9 practice was relating to RTC criminal referrals  
10 coming out of the Kansas City office?

11 A Not out of the Kansas City office, but I  
12 can say that the RTC, being a national organization,  
13 does generally do business the same way in all of  
14 their regional offices; and it's, in my experience,  
15 been rare for them to provide documents to the U.S.  
16 Attorney's Office.

17 Q But what I'm trying to understand is  
18 whether it could have been the practice that the  
19 practice was different in the Kansas City office.

20 A I suppose it could have been different,  
21 yes.

22 Q So you have no knowledge that it was

1 Ms. Lewis's decision to attach the exhibits; is that  
2 correct?

3 A Again, at the time I didn't make that  
4 conclusion. This is with the benefit of being able  
5 to look back at this.

6 Q Well, do you have knowledge now that it was  
7 Ms. Lewis's decision to attach the exhibits to the  
8 criminal referral?

9 A No, I don't.

10 Q The second basis, I think, that you cited  
11 was that you have some knowledge that Ms. Lewis tried  
12 to receive information regarding the referral from  
13 Mr. Irons. And is it your understanding that it's  
14 unusual for regulatory agency to follow up on the  
15 criminal referrals that they submit?

16 A No, but my recollection of that particular  
17 event concerned statements that Mr. Irons attributed  
18 to Ms. Lewis having talked to reporters about this  
19 incident, and that was the basis of his concern, for  
20 having the conversation with her. I believe it was  
21 his opinion that she was attempting to elicit  
22 information about the existence of a particular case

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1 but he was concerned about the fact that she made  
2 mention of the fact that she shared her thoughts with  
3 a reporter.

4 Q Well, how does that relate to your  
5 statement that you find that there was an effort  
6 being made by her to have the criminal referral  
7 prosecuted forthwith?

8 A Well, I couple that with my experience as  
9 it relates to referrals that are received at FBI  
10 offices. And I can only base that on my experience.  
11 It's unusual for me to see a referral with exhibits  
12 sent to the U.S. Attorney's Office.

13 Q Okay. Setting that aside.

14 A I can't.

15 Q Okay. Is it your understanding that you  
16 can't separate the two out?

17 A That's what I said earlier, yes.

18 Q It's also your testimony that you have no  
19 knowledge to attribute that directly to Ms. Lewis?

20 A That's correct.

21 Q I believe that you testified earlier with  
22 regard to two other savings and loans in Little Rock,

1 First Federal and Savers, as they related to  
2 prioritizing savings and loans and criminal referrals  
3 that the FBI wanted to look at; is that correct?

4 A That's correct.

5 Q Do you have any knowledge of the extent of  
6 any criminal activity which occurred at First Federal  
7 or Savers?

8 A No, no, I don't.

9 Q And as opposed to that, you do have  
10 knowledge that there was at least allegations of  
11 extensive criminal activity at Madison Guaranty  
12 Savings & Loan, as evidenced by the nine additional  
13 referrals?

14 A That's correct.

15 MS. FISHER: No further questions.

16 EXAMINATION

17 BY MR. COLE:

18 Q Very briefly, I promise it will be very  
19 briefly, Mr. Kendrick.

20 I'm still struggling with understanding  
21 what happened in the series of teletypes between  
22 October 7 and October 16. And I believe your answer

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1 to what I think was my last question, or one of my  
2 last questions, was that the significant difference  
3 was that by the time of the October 16 teletype, the  
4 FBI in Little Rock had had an opportunity to review  
5 the exhibits to the referral which they previously  
6 had not; is that correct?

7 A That's correct.

8 Q At the October 8 meeting, was there  
9 discussion about the need to review the exhibits and  
10 the fact they had not been reviewed by the FBI?

11 A I believe there was some general discussion  
12 in that area.

13 Q If you could be as specific as you possibly  
14 can, recognizing that this is something that happened  
15 two years ago, when you say "general discussion," by  
16 whom and what was said?

17 A I wish I could provide you with something  
18 more specific than that. It was not a very long  
19 meeting, as I recall perhaps 15 or 20 minutes, and I  
20 can't recall the specifics.

21 Q Let me ask it this way, then. I'm trying  
22 to use a neutral term -- the interest in looking at

1 the exhibits, was that on the part of the FBI or the  
2 Department of Justice officials?

3 A I can't attribute where the need to review  
4 the evidence came from, whether it was FBI or DOJ  
5 officials. And I can't even specifically say that it  
6 came up at that meeting, but a decision was made by  
7 our officials, I can tell you that, that it was  
8 necessary for us to take a look at the exhibits.

9 Q And that would be in the subsequent meeting  
10 that you had with your colleagues at the FBI?

11 A I was not privy to that meeting. That was  
12 a meeting between Mr. Verinder and Mr. Kubic and the  
13 information was passed along to me, this is the  
14 information that should be included in your  
15 teletype.

16 MR. COLE: Thank you very much.

17 MS. FISHER: Thanks.

18 (Whereupon, at 1:00 p.m., the deposition  
19 was concluded.)

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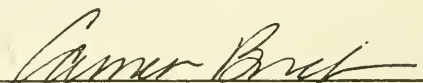
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KEVIN B. KENDRICK

CERTIFICATE OF NOTARY PUBLIC & REPORTER

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I, CARMEN BUNCH, the officer before whom the foregoing deposition was taken, do hereby certify that the witness whose testimony appears in the foregoing deposition was duly sworn; that the testimony of said witness was taken in shorthand and thereafter reduced to typewriting by me or under my direction; that said deposition is a true record of the testimony given by said witness; that I am neither counsel for, related to, nor employed by any of the parties to the action in which this deposition was taken; and, further, that I am not a relative or employee of any attorney or counsel employed by the parties hereto, nor financially or otherwise interested in the outcome of this action.

  
Notary Public in and for the  
District of Columbia

My Commission Expires MARCH 14, 1998



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